IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 674 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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PRAVINKUMAR AMRATLAL GAJJAR - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR AD SHAH for Appellant(s) : 1,
MR AJ DESAI, LD.APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 28/12/2006

ORAL JUDGMENT

1. The present appeal is preferred by the appellant-convict (hereinafter referred to as 'the appellant') under Section 374 of the Code of Criminal Procedure, 1973, assailing the judgment and order of conviction and sentence passed by the learned Special Judge, Ahmedabad

City, dated 27th September, 1989, whereby the appellant has been held guilty for the offence punishable under Section 161 of the Indian Penal Code and also under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as 'the Act'), on various grounds mentioned in paragraph no.8 of the memo of the appeal. The learned Special Judge after recording the evidence of the prosecution and defence, and hearing the arguments, convicted the appellant for the aforesaid offences and sentenced the appellant to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/- and in default to undergo rigorous imprisonment for three months qua the offence punishable under Section 161 of the Indian Penal Code and imposed punishment under Section 5(2) of the Act to undergo rigorous imprisonment for two years and a fine of Rs.1000/- and in default to undergo rigorous imprisonment for three months. The substantive sentence is ordered to run concurrently by the learned Special Judge.

2. Shri A.D. Shah, learned counsel appearing for

the appellant, has taken this Court through the grounds of challenge and has read over the oral evidence of all the three important witnesses namely the complainant-Ayubbhai Chhotubhai Shaikh-PW-1, Ex.9; Narendrakumar Maganlal Soni-Panch no.1, PW-2, Ex.16; and Shri Kanchanlal Ratilal Jadav-Police Inspector and Investigating Officer-PW-4, Ex.24; along with the evidence of three defence witnesses examined i.e. DW-1 Sumanbhai Ratilal Joshi Ex.34, DW-2 Navinbhai Mohanlal Patel Ex.44 and DW-3 Nafisaben A. Karkhanawala Ex.45.

3. It is necessary to state the facts of the prosecution case in brief. It is the case of the prosecution that the appellant was serving as Assistant Engineer, Water Department, in the Ahmedabad Municipal Corporation at Ahmedabad. One Munshibhai Chandbhai Lokhandwala, residing near Char Toda Kabrastan, Behind Ramkumar Mills, Ahmedabad, had applied for water connection in Ahmedabad Municipal Corporation on 17th May, 1986 with the help of complainant, who is son-in-law of the said Munshibhai. The requisite amount of

Rs.243-47 ps. to be paid was paid to the Ahmedabad Municipal Corporation. The complainant thereafter had often inquired about the progress but the said application was not sanctioned under some pretext. On 29th December, 1986, at about 03-00 p.m. the complainant met the appellant being a responsible officer in his cabin and requested him for giving him water connection. During his repeated visits, he was asked that his work cannot be done without making the payment. The complainant, therefore, inquired as to what he was required to do and appellant told him that the complainant shall have to pay the amount of Rs.100/- to the appellant and Rs.200/- as per the rules. Thus, on payment of the aforesaid total amount of Rs.300/-, he will send the employee of the Ahmedabad Municipal Corporation for connection. The complainant then told him that at present he had no money and the appellant, therefore, told him to come in the evening between 03-00 p.m. and 04-00 p.m. with an amount of Rs.300/- within a day or two, and his work will be done. As the complainant had

no intention to pay the amount demanded illegally, he approached the ACB Police Inspector and filed a complaint on 31st December, 1986 at about 12-30 p.m. The ACB Police Inspector Shri Jadav arranged for two panchas and by completing the formalities required for arrangement of trap, the complainant along with the panchas and raiding party personnel went to the office of the appellant. The complainant found that the appellant had proceeded on half day leave and, therefore, he was not available. So the complainant and raiding party personnel returned to the jeep car parked near Khamasa Gate, where Police Inspector Shri Jadav was waiting for the signal. The currency note of Rs.100/- stained with anthracene powder was taken back from the complainant on a piece of paper and the same was wrapped by the Police Inspector and thereafter, necessary formalities for closure of the trap were carried out. The complainant was informed that he should see that if the appellant again demands for bribe, the said Police Inspector is contacted. On 05th January, 1987, the

complainant again approached the ACB Police Inspector Shri Jadav informing him that he had again contacted the appellant on 03rd January, 1987, and when the appellant has again made a demand of amount of bribe, and he is informed by the appellant to see him in the evening between 03-00 p.m. and 04-00 p.m. on Monday, then ACB Police Inspector Shri Jadav recorded the further complaint of the complainant below the original complaint dated 31st December, 1986. Thereafter, he called for panchas other than those who were called on 31st December, 1986 and these panchas were explained about experiment and effect of anthracene powder on the currency note, earlier which was kept in the pocket of the complainant and the same was to be handed over, on demand, to the appellant. The panch no.1 was informed to remain in company of the complainant and was asked to see and hear whatever happens between the complainant and the appellant. After reaching the Water Department, the complainant along with the panch no.1 first went to the table of one Navinbhai-DW through whom the file pertaining to the water connection of the

complainant was taken and as per the rules, they paid the amount of Rs.200/- to Nafisaben DW-3, Account Clerk of the Water Department and she issued a receipt and retained the file with her. The complainant and panch no.1 then went to the said Navinbhai with the receipt of Rs.200/-. The said Navinbhai prescribed for certain articles to be purchased for water connection on the reverse side of the said receipt and, thereafter, the complainant and panch no.1 went to the cabin of the appellant. There was only one spare chair in the said cabin of the appellant which the complainant occupied and the panch no.1 stood there. The complainant asked about the water connection and the appellant inquired about the panch no.1. The complainant introduced the panch no.1 as his friend. The complainant requested the panch no.1 to go out. The panch no.1 went out of the cabin and stood near the half flap door of the cabin of the appellant. It is alleged that he was able to hear the talk between the appellant and the complainant, and demand of money by the appellant and saw the payment made by the complainant and acceptance

of the same by the appellant. The complainant then came out of the cabin and gave a signal as instructed and on receiving the signal, the members of the raiding party including the panch no.2 asked the appellant not to move from his position. The ACB Police Inspector Shri Jadav came there and gave his introduction and thereafter, necessary formalities as to search of muddamal currency note of Rs.100/- was carried out and in turn, the experiment of ultraviolet lamp and seizure was completed. The appellant was issued a seizure memo for the articles seized from the appellant. The ACB Police Inspector thereafter recorded the statements of witnesses including Navinbhai, Nafisaben and members of the raiding party; and on obtaining necessary sanction from the Commissioner of Ahmedabad Municipal Corporation to prosecute the appellant, filed a charge-sheet on 13th June, 1988.

4. After reading the oral as well as documentary evidence, Shri A.D. Shah, learned counsel appearing for the appellant, has concentrated

his arguments and drawn the attention of the Court to the following relevant dates :

17th May, 1986	Date of making application for water connection.
29th December, 1986	The complainant, son-in-law of Shri Munshibhai-orig.applicant, when approached the appellant, the appellant had allegedly made demand of Rs.100/- as bribe/ illegal gratification.
31st December, 1986	The complaint came to be filed and a trap was arranged but the same could not be materialised as the appellant was on half day leave.
01st January, 1987	The order sanctioning water connection was received by the said Shri Munshibhai, father-in-law of the complainant. As the water connection was already sanctioned much prior to the time of alleged demand of Rs.100/- made by the appellant.
03rd January, 1987	The complainant went to the office of the Water Department for inquiry and he was informed that the water connection is sanctioned and it is alleged that

	he repeated the demand of Rs.100/- and asked the complainant to make the payment of Rs.200/- towards water connection charges.
05th January, 1987	Further complaint came to be registered by ACB Police Inspector Shri Jadav and at about 03-00 p.m. a trap was arranged and on that day it is alleged that the appellant demanded and accepted the said amount in his cabin of water department of Ahmedabad Municipal Corporation.

5. I have carefully gone through the charge Ex.3 (page no.47 of the paper-book) and the evidence of PW-1 Ex.9, PW-2 Ex.16, PW-3 Ex.20 and PW-4 ACB Police Inspector Shri Jadav Ex.24, along with the other documents tendered in evidence by these witnesses. I have also gone through the contentions raised by the appellant in the written explanation given after answering the questions put by the Court under Section 313 of the Code of Criminal Procedure, 1973 while examining the appellant i.e. Ex.31.

6. It is argued by Shri A.D. Shah, learned counsel appearing for the appellant, that the evidence of prosecution should be read in reference and background of the evidence led by the defence witnesses. Out of these three witnesses two witnesses were initially prosecution witnesses and their statements were recorded by the ACB Police Inspector Shri Jadav. However, for the reasons best known to the prosecution they were not examined. So they have been examined by the appellant as defence witnesses because both these witnesses had played some role in the actual process of the application submitted by the complainant on behalf of his father-in-law Shri Munshibhai. Shri A.D. Shah, learned counsel appearing for the appellant, has scanned the evidence while canvassing his main points of arguments and if the submissions of Shri A.D. Shah are summarised and the same are mentioned in nut-shell, then they can be placed as under:

(i) The story of demand of bribe on 29th December, 1986, on reading of total

evidence is found highly unnatural and improbable because the process of application to grant water connection took more than reasonable time as Sunni Wakf Committee had raised an objection to grant water connection to the said Shri Munshibhai on various grounds and the contention of the said objection was to be considered by the Sanctioning Authority and processing machinery, and this Wakf Committee was intimated by the Ahmedabad Municipal Corporation that their objection cannot be sustained on 29th November, 1986. The Deputy City Engineer who is the Sanctioning Authority had sanctioned the connection on 16th December, 1986 and nothing was required to be done by the Water Department and unless the objections raised by the Wakf Committee are resolved or otherwise overruled, there could not have

been reason for the appellant to demand the bribe and it is not the case of the prosecution that the appellant had any time demanded the bribe to help the complainant and the orig. applicant Munshibhai in getting out of the clutches created by the Wakf Committee and the letter as to the sanction of the water connection was already signed by the Section Officer and the same was given to Navinbhai for despatch. The document Ex.48 in the background of the oral evidence of DW-2 Navinbhai Ex.44, clearly suggests that the file was with Navinbhai till 26th December, 1986 and the same was sent to Despatch Clerk. After 26th December, 1986, the file was with one Shri Joshi i.e. DW-1, Ex.34. Undisputedly, after receipt of sanction order, the orig.applicant Shri Munshibhai was supposed to pay an amount of Rs.200/- as water connection

charges and the same was not paid till 29th December, 1986 or at early hours on 31st December, 1986. It is not the say of the complainant that after paying the water connection charges to the tune of Rs.200/-, he had been to the appellant either with a request or with grievance that for no reason the Department is not giving water connection and at that point of time, the appellant had demanded the bribe amount of Rs.100/-. Thus, according to Shri A.D. Shah, the demand itself is highly unnatural and improbable.

(ii) It is further argued by Shri A.D.Shah that the evidence of the complainant ought not to have been accepted as reliable and believable by the learned trial Judge, especially when he has deposed that on 29th December, 1986, the appellant took out the file and

informed the complainant that his water connection is sanctioned and he should deposit the amount because the file at the relevant point of time had already reached to the Despatch Clerk and the orig.applicant Shri Munshibhai was informed about the sanction of his water connection. There is no challenge as to the evidence of DW-2 Navinbhai, wherein he has stated that the file was with DW-1 Shri Joshi on the relevant date. There is evidence to show that the orig.applicant had already received the letter dated 26th December, 1986, sanctioning the connection and in fact, the complainant being the representative of the orig.applicant had contacted the supervisor DW-Navinbhai on 03rd January, 1987. The evidence of Navinbhai establishes that the complainant after taking file had gone to pay up the amount of

Rs.200/-. So it is clear that till 03rd January, 1987, the amount required to be paid by the complainant was not paid and it is not the case or allegation by the complainant that anybody in the Water Department was tossing him or the file, so that he cannot pay the amount of Rs.200/- towards the water connection charges. On the contrary, it is the say of the complainant that he had been to the Account Clerk on 03rd January, 1987 for paying up the amount of Rs.200/- but as the time fixed for receipt of cash was over, he could not pay the amount and the file was returned to the said Navinbhai by the complainant. The complainant when had approached straight way to Navinbhai even on 05th January, 1987, to take out the file for the purpose of depositing the amount of Rs.200/-, his oral evidence of demand of Rs.100/- made by the

appellant could not have been believed.

(iii) On plain reading of the evidence of the complainant, it transpires that on 03rd January, 1987, in the cabin of the appellant, nothing must have happened. The appellant was not in picture at that relevant point of time. So the evidence of the complainant about the event that had allegedly occurred in the cabin of the appellant on 03rd January, 1987, appears to be highly improbable and it is not the say of the complainant that the appellant directed the complainant to approach Navinbhai for arrangement of payment of Rs.200/- first. The version of the complainant that again on 03rd January, 1987, the appellant has some talk for demand of Rs.100/- which he had made on 29th December, 1987, is again highly unnatural. On the contrary, this

version of the complainant clearly exhibits the anxiety of the complainant to make out a case for lodging further complaint and arrange a trap and it also appears that he was out to trap the appellant for the reasons best known to him.

(iv) The presence of anthracene powder on coat of the complainant totally falsifies the complainant as to how he handled the coat. Simply return of the receipts of Rs.200/- by the appellant to the complainant and that the complainant going out of the cabin is falsified by absence of anthracene powder on these receipts. The Investigating Officer Shri Jadav had not even cared to examine the receipts under the ultraviolet lamp. Certain admissions made by the complainant as to his leading role in the society and his wish and endeavour

to help the people at large clearly poses him to be a man with some ego and as his work was not done in couple of hours after the order of sanction was issued, he had decided to trap the appellant probably on a suspicion that he is the officer responsible for the delay in implementing the order of sanction of water connection and, therefore, he had determined to trap the appellant. So on 03rd January, 1987, he again went to the office of the ACB and lodged the second complaint, which came to be recorded as further complaint.

(v) The other point argued by Shri A.D. Shah is that the evidence of prosecution witnesses on the point of anthracene powder test and the alleged marks, is conflicting and the learned trial Judge ought not to have placed any reliance on such evidence. The learned trial Judge

did not find the evidence of panch as to the anthracene powder to be reliable. The Court should consider the observations made by the learned trial Judge wherein he has stated that :

> “Therefore, the evidence of PW.2 that when that note was seen prior to application of anthracene powder, no light blue fluorescent was seen, in my opinion, is not correct and I will say that it is only out of either some confusion or misunderstanding or out of some wrong apprehension of facts. Actually the anthracene powder was applied to the currency note on 31/12/86 and there was no question of demonstration of the said powder test again on 5/1/87.”

(vi) The panch examined before the Court i.e. panch no.1 had neither

participated at all nor he was present when the anthracene powder was applied on the muddamal currency note. So he had no opportunity to see the currency note prior to the application of anthracene powder. So there was scope for him to see the muddamal currency note without anthracene powder marks under the rays of ultraviolet lamp. The learned trial Judge has interpreted the evidence in his own way and asked a question in the nature of cross-examination so that a clarification can be sought from the witness. Shri A.D. Shah has drawn the attention of the Court to the question asked by the learned Presiding Judge of the Court and in answer to this question, the panch witness answered that at that time on that note no shining light was seen. Thereafter, the anthracene powder was applied to that note. Meaning

thereby, the say of the panch witness is that once a note was seen by him under the ultraviolet lamp and at that time, it was not smeared with anthracene powder marks and, thereafter, the anthracene powder was applied. So according to Shri A.D. Shah, the demonstration of anthracene powder test in the evidence of the panch on that aspect on 05th January, 1987, i.e. on the day of trap ought to have been treated unreliable. This witness has also not described exactly the anthracene powder marks that he must have seen. In the same way, the complainant has also not described the anthracene powder marks on the currency note in the correct manner. According to the complainant, after application of the anthracene powder on the currency note, it reflected light blue florescent colour under ultraviolet lamp. The marks of

anthracene powder under the ultraviolet lamp would not look light blue florescent. The marks are seen glittering white in the light blue florescent rays of the ultraviolet lamp. It appears that this part of panchnama has been drawn mechanically, otherwise this witness ought not to have committed such a vital mistake. The evidence of Investigating Officer Shri Jadav discloses one more vital aspect and he has admitted that he is neither the expert in respect of the test of anthracene powder nor he had taken any training or read any book as to the use of anthracene powder. The police personnel Shri Bhavanji Nathuji, who performed the demonstration of anthracene powder probably a person who must have been trained by the Department, has not been examined.

(vii) The third major point advanced by

Shri A.D. Shah is that the learned trial Judge ought not to have accepted the say of the panch witness on the vital aspects as to the talk between the complainant an the appellant and on the point of passing of muddamal currency note from the complainant to the appellant, or its handling prior to the actual entry of the complainant in the cabin of the appellant and its ultimate seizure. Admittedly, the panch was not present in the cabin and he was standing outside. The position of the half flap shutter to the cabin assumes importance and the defence produced photograph at marked 'E' to show the nature of half shutter. The panchnama indicates that the panch witness saw the entire incident from the crevice between the frame of the shutter and half shutter. The said description tallies with the description of shutter shown in

the photograph marked 'E'. However, the substantive evidence of panch witness shows that the cabin of the appellant had half shutter with two flaps, and the panch witness claimed to have witnessed the passing of muddamal currency note from the said crevice between the two flaps of the shutter. This discrepancy ought not to have been ignored as minor discrepancy and the learned trial Judge ought to have held that the evidence of panch witness about his attempt to peep inside the cabin from any crevice or witnessing the event is not accepted on the ground of this material conflict. The evidence of Investigating Officer also is not consistent on this vital aspect and the claim of the panch witness to have seen the entire incident from the crevice of the half shutter and adjoining frame was not possible at all. The situation outside the

cabin of four cupboards in a line also makes the position of the panch standing near the shutter unrealistic. It is in evidence that the spare chair was just opposite to the appellant. The length and width of the cabin has also come on record, and so a person if is at 180 degree, and if the cabin had actually two flap shutters, could not see the actual passing and acceptance of bribe amount. Normally the people or at least the bribe taker would not talk with high volume or in a tone which can be overheard by anybody. It is in evidence that the appellant was sharing a telephone line with the officer having adjacent cabin and there was a gap between the cabin of the appellant and the officer sitting in the adjoining cabin. So any of the two officers can use and lift the telephone kept in between. There is nothing on record to show

as to whether the said officer who was supposed to occupy the cabin was present in the cabin and that officer being very near to the hall had overheard the alleged talk or not. In such a situation, the evidence of prosecution witnesses ought not to have been accepted as gospel truth. On the contrary, it emerges from this evidence if read in reference to the defence plea and the evidence led by the defence witnesses that the prosecution has failed in proving its case beyond reasonable doubt and there is ample possibility of intentional implication of the appellant either under the anger or for any other purpose.

(viii) The learned trial Judge has failed in appreciating the defence evidence in its true perspective. Merely because they are serving in the Water Department, it cannot be

said that their evidence should not be accepted. The evidence of these witnesses as to handling of file, position of the shutters of the cabin of the appellant and the description of the office premises ought not to have been discarded treating these three witnesses as partisan witnesses, especially when it is open for the prosecution to examine all these witnesses. The position of the shutter improbablizes the claim of the panch witness actually seeing the passing of currency note and hearing the conversation. The prosecution in the present case, according to Shri A.D. Shah, has not satisfactorily proved the demand and acceptance beyond doubt and the appellant, therefore, was required to be acquitted.

7. According to Shri A.J. Desai, learned Additional Public Prosecutor, appearing on

behalf of the respondent-State, the finding recorded by the learned trial Judge is absolutely just, legal and proper; and the evidence has been correctly appreciated and there is no patent illegality or infirmity in the finding. There is more than sufficient evidence to link the appellant with the crime. It is in evidence of the complainant that after 17th May, 1986 i.e. date of application given for water connection, the complainant had met the appellant on three to four occasions. His version is natural. First time the demand was made on 29th December, 1986 by the appellant. It means the demand was made after the order of sanction of water connection on 26th December, 1986 and thus, there was no need for the appellant to demand the amount of Rs.300/- instead of Rs.200/-. Even the complainant has said that the appellant completed the demand and it was specifically mentioned to the complainant that the complainant will have to pay the amount of Rs.200/- for water connection and Rs.100/- to him, because he was the key person in actual connection of water pipes with the tap

purchased by the complainant. The pretext of objection raised by the Wakf Committee should be treated irrelevant because the objections were already overruled much prior to 29th December, 1986. Taking this Court through page no.93 i.e. a chit found with anthracene powder, it clearly shows that the amount was clearly accepted willfully by the appellant. When there is sufficient evidence on record about passing of the bribe amount, some error committed by the witness in describing the anthracene powder marks would not affect the merits of the case. The scientific proof is only required when there is hazy or weak evidence as to passing of bribe amount. The deposition of Shri Jadav should be accepted in reference to the recovery of bribe amount from the appellant with the help of panchas. Though there is no reference as to whether the ultraviolet lamp used in the present case was a battery operated or electric, it would not affect the merits of the case. The currency note used is the same currency note which was earlier used and there is no bar in using the same currency note for the purpose as the same

was kept by Shri Jadav in safe custody. The conduct of the appellant appears to be guilty, is one of the arguments of Shri A.J. Desai. It is argued by Shri Desai that the conduct of the appellant asking the panch no.1 to go outside his cabin is also doubtful. If the sitting posture was exactly in 180 degree position, the movement of the appellant and the complainant can be seen from outside. The photograph marked 'E' taken by the appellant cannot be read as reliable piece of evidence because the same has not been legally proved and it is taken after a lapse of long period and the position might have changed during that period. The other notes which were taken out would also have anthracene powder marks, but the appellant was asked to sit as it is and in the same posture. The recovery of handkerchief should be considered relevant and the search was carried out with the help of panchas. It is not clear that the cabin was with two half flap shutters or one flap shutter. However, by taking the cabin having half shutter, the defence has developed the argument in this respect which is an

afterthought. When there was no animosity between the complainant and the appellant, why the complainant would implicate the appellant ? It appears that every thing was depending upon the payment of Rs.100/- to the appellant, and therefore only, no effective steps were being taken by the Department. The orig.applicant-Munshibhai was otherwise entitled to water connection as he had erected a flush toilet under the scheme of 80-20. It was the policy of the Ahmedabad Municipal Corporation to give water connection to the person whoever erects a toilet under the said scheme. So there was no need to give any bribe amount for water connection to the appellant. Neither there is anything clear in panchnama nor in evidence that it was one flap or two flaps shutter. Even for the sake of argument if it is accepted that there is some discrepancy on this point, it would not make the evidence of panch inconsistent because he is found reliable about the evidence led by him so far as the version overheard by him and the body gestures seen by him while passing of muddamal currency note are concerned.

8. Shri Desai has further argued that the presence of panch witness with the complainant in the office of the Water Department of Ahmedabad Municipal Corporation has not been challenged even indirectly and there are no material contradictions as to the entry of both these witnesses in the cabin of the appellant and exit by the panch no.1 at the instance of the appellant and there is also no contradiction on the fact of recovery of muddamal currency note from the appellant/ cabin of the appellant. Merely because some other staff members were able to see or peep inside the cabin as this row of cabin does not have roof on the top of the cabin would not make the entire transaction doubtful. So when it is not clear even by reading panchnama or depositions of all the three witnesses that the shutter of the cabin had two flaps or one, the say of the panch that he had seen the entire incident by peeping inside the cabin from the crevice, should not be turned down. The complainant in his deposition Ex.9 has stated clearly that on the signal given by

him, the Police Inspector Shri Jadav, panch and raiding party personnel had entered the cabin of appellant, and under the rays of ultraviolet lamp, the marks of anthracene powder were seen on the left hand fingers and thumb of the appellant. The said marks were also seen on some portion of palm and the border of left side pocket was also found stained with anthracene powder and the muddamal currency note was then taken out by the panch no.1 from the left side pant pocket of the appellant, and one chit was also found along with the muddamal currency note. When both these papers i.e. currency note and the chit were seen under the rays of ultraviolet lamp when they were in the hand of panch no.1, they were found stained with anthracene powder. On one side of the chit there was some writing and on that side the anthracene powder marks were found. There was no reason, according to Shri A.J. Desai, to discard this part of evidence. The amount was recovered from the pant pocket of the appellant. Even as per the evidence, the complainant and the appellant were sitting just opposite to each

other and a table must be there between these two persons and there is no explanation of satisfactory nature as to how the muddamal currency note smeared with anthracene powder could reach in the pant pocket of the appellant. Ultimately, it appears, according to Shri Desai, that the complainant was interested in getting the actual establishment of physical connection of the water tap and not only in an on-paper sanction, and the appellant being a key person in instructing his subordinate staff in doing that exercise, the issuance of sanction order on 26th December, 1986, by itself would not make the prosecution case doubtful or it should not be held that there was no reason for the appellant either to demand or accept money. As there was no transaction between the complainant and the appellant; and the appellant was not supposed to accept any currency note from any of the visitors in the office of the Ahmedabad Municipal Corporation, how and why he accepted the currency note of Rs.100/- from the complainant, requires to be explained and by throwing some doubt on the

experiment carried out with the ultraviolet lamp, the appellant cannot successfully disprove the allegations. It is true that there is nothing clear from the evidence as to whether the muddamal currency note was taken out from the pocket simultaneously or it was taken out subsequently, but the fact remains that it was found stained with anthracene powder.

9. According to Shri Desai, the narration about the articles taken out from the pocket of the appellant by panch witness PW-2 Ex.16, found in paragraph no.5 of his deposition, does not make the case of the prosecution doubtful. Merely because all the articles were not found stained with anthracene powder, would not make the deposition of the panch doubtful that he is the person who took out all the articles i.e. one comb, currency notes worth Rs.350/- and a bunch of keys, and the Court should not presume that the muddamal currency note actually was not recovered from the pocket.

10. The Investigating Officer Shri Jadav in his

deposition in paragraph no.7 (PW-4, Ex.26) has stated that the muddamal currency note and the chit were taken out by the panch no.1 from the pocket of the appellant simultaneously because he had used the word “Saathe” (in vernacular Gujarati language). According to Shri Desai, in such cases the Court should also think the methods which are being adopted by the corrupt officials in accepting the amount of bribe. So from all the counts, there is no error in recording conviction by the learned trial Judge and hence, the judgment and order of conviction and sentence should be upheld.

11. In reply to the arguments advanced by Shri A.J. Desai, learned Additional Public Prosecutor, appearing on behalf of the respondent-State; Shri A.D. Shah, learned counsel appearing for the appellant, has submitted that the prosecution cannot read some part of evidence by picking out from the entire deposition. There is material contradiction and conflict as to the ultraviolet lamp experiment prior to taking out the note from the pocket of the appellant

and the other inconsistencies make the case of the prosecution doubtful that the muddamal currency note was genuinely taken out from the left side pant pocket of the appellant by the panch no.1. If the evidence by itself is inconsistent and not of clinching nature, there is no need to cross-examine the panch witness thoroughly on the point and the appellant can positively point out these inconsistencies. There is clear conflict as to the availability of the crevice between the frame of the shutter and one flap of the half shutter. So when the entire story told by the panch falsifies the passing of currency note from the complainant to appellant is doubtful, the learned trial Judge was supposed to scan the evidence of recovery of muddamal currency note from the pocket of the appellant closely and that has not been done in the present case. When the appellant was on the opposite side of the table where the complainant was sitting and the appellant was asked to sit in his chair and was directed not to move from the spot, there was no scope to enter with ultraviolet lamp on the opposite side of the

chair to carry out the experiment with the use of ultraviolet lamp and to insert hand in the pocket of the appellant for taking out muddamal currency note. If the handkerchief was also taken out as alleged by the prosecution, why the said handkerchief was not placed under the ultraviolet lamp, and this question is not getting answered from the evidence. One possibility that cannot be ruled out is that the appellant may have refused to accept the muddamal currency note tendered to him or offered to him and during that the appellant might have come in contact of anthracene powder and while taking out the handkerchief from his pocket, his pant may have also got stains of anthracene powder; and entry of ultraviolet lamp inside the pocket is found highly improbable because there was no such space between the dividing wall of the cabin, table and the seat on which the appellant was sitting. This part of panchnama has been recorded mechanically without following the said exercise, with a view to see that the arranged trap can be shown as successful trap.

12. In reply to the arguments advanced by Shri A.J. Desai, learned Additional Public Prosecutor, Shri A.D.Shah, has placed reliance on the decision in the case of ***Tej Bahadur Singh v. State of U.P., reported in AIR 1990 SC 431***, wherein the Apex Court while considering the evidence of the trap holder has appreciated the probability aspect and has observed that the case of the prosecution should be full proof.

13. The another decision cited by Shri A.D. Shah is in the case of ***Ram Singh Bhadra Singh v. State, reported in 1960 GLR 138***, wherein this Court after a detailed discussion on the scientific aspect of anthracene powder has observed that there should be an evidence giving sure indication of presence of anthracene powder. So the description of presence of anthracene powder if is found inconsistent to its scientific characteristics, then that evidence should be discarded as hazy evidence. The prosecution

may lead positive evidence by way of expert evidence or book of science to prove the method of detection of anthracene powder. The nature of test should be applied. The nature of the result to be expected and whether a layman can detect the anthracene powder when such test is applied. The test must be such that if it is applied and the result is positive, then the positive result leads to only one conclusion namely the presence of anthracene powder. In the present case, the Investigating Officer himself has admitted that he is neither an expert nor has undergone any training in this regard. The complainant himself is a trap witness and there is no cogent evidence that the panch witness had seen the actual passing of currency note from the complainant to the appellant. In that situation, the ratio of the decision in the case of ***Raghbir Singh v. State of Punjab, reported in AIR 1976 SC 91***, wherein the Apex Court has observed about selection of panch, requires consideration (page:91). I would like to reproduce the relevant part of paragraph

no.8 of the cited decision read over by Shri A.D. Shah before this Court, which is as under:

> *"8. ... ... Now it is significant that the only two persons who witnessed the actual passing of bribe were Jagdish Rai and Arjun Das Inspector Hardas Singh knew very well that Arjun Das was brought by Jagdish Rai and presumably he was connected with Jagdish Rai and could not, therefore, be regarded as an independent person, even so he did not care to secure an independent person to act as a witness of the raid. In fact, one Mohal Lal had acted as a witness when Jagdish Rai gave information to Inspector Hardas Singh in regard to the demand for bribe made by the appellant and though he was an independent person he was not taken as a witness by Inspector Hardas Singh when the latter went for the purpose of the raid. Instead, one Makhan, who was a sweeper in the whole time employment of the police wsa taken as a witness.*

But, even he was not sent along with Jagdish Rai to witness the passing of the bribe. It is indeed difficult to see how Makhan could possibly be regarded as an independent witness. It is indeed a sad commentary on the functioning of the anti-corruption department in this case that the only safeguard against false implication in the offence of bribery which is provided by the presence of independent and respectable witnesses, was completely ignored and two witnesses were taken, one of whom was a relative of Jagdish Rai and the other a sweeper in the whole time employment of the police. We must take this opportunity of impressing on the officers functioning in the anti-corruption department to insist on observing this safeguard as zealously and scrupulously as possible for the protection of public servants against whom a trap may have to be laid. They must seriously endeavour to secure really independent and respectable witnesses so that the

evidence in the mind of the court and the court is not left in any doubt as to whether or not any money was paid to the public servant by way of bribe. We cannot, in the present case, rely on the evidence of Jagdish Raj and Arjun Das for the purpose of holding that a sum of Rs.50/- was paid by Jagdish Raj to the appellant by way of bribe."

14. Shri A.D. Shah has taken me through the relevant part of paragraph no.9 of the decision in the case of ***Gopal Lal Ghisulal Chhipa, reported in 1998(1) GLH 943***, which is as under :

"9. Before I proceed to examine the evidence, the requirement to prove the charge may be stated. It is held by the Supreme Court in the case of Hari Dev Sharma v. State (Delhi Administration)- AIR 1976 SC 1489 that vital part of the prosecution if cannot be believed or not proved, conviction cannot be based. As laid down in this

case, the demand and acceptance are required to be proved without any doubt, and if one of them is not proved, being the vital part, the offence cannot be said to have been constituted, and therefore conviction if inflicted cannot be sustained. Likewise view has been taken in the case of Anantray Lalji Pandya v. The State of Gujarat- 1982 G.L.H. 472; State of U.P. v. Ram Asrey- 1990 Cri. Law Reporter, 188; and Palanisamy Raju v. State of Tamil Nadu 01986 Criminal Law Reporter, 99. In view of the law made clear in the abovestated decisions, what is required to be determined is whether the prosecution has successfully established the case about demand and acceptance."

15. Shri A.D. Shah has also placed reliance on the decision in the case of ***Ambalal Motilal Patel v. State, reported in 1960 GLR 113***, wherein the Division Bench of this Court has held that two tests required to be satisfied by the

prosecution to prove the presence of anthracene powder are : (i) that no powder is detected with the necked eye, and (ii) when the ultraviolet light is focused, there is emission of light blue florescent light. In the case of an interested witness, the Court must always weigh with the evidence with particular portion and if after scrutinising the evidence of an interested witness, the Court finds it safe to accept such an evidence then only the independent corroboration is not necessary. The evidence of a partisan witness which is found unsatisfactory cannot be relied upon for implicating the accused persons without independent corroboration and it is argued that in the present case there is no satisfactory evidence to show that the panch witness had seen the presence of anthracene powder on the pocket of the appellant or inside the pocket of the appellant on account of absence of probability because it was not possible to carry out such an experiment at the place suggested by the prosecution in the cabin of the appellant.

16. Shri A.D. Shah, learned counsel appearing for the appellant, has placed reliance on the decision in the case of ***Ganga Kumar Srivastava v. State of Bihar, reported in JT 2005(6) SC 356***. While developing the arguments that there was no reason for the appellant to demand the amount of bribe of Rs.100/- on 29th December, 1986, as alleged by the complainant because the water connection was sanctioned on 26th December, 1986 and the orig.applicant Shri Munshibhai was already intimated about passing of the said order by the Despatch Clerk and it is not in evidence that the complainant was aware about this situation prior to 31st December, 1986. In the cited decision, the Apex Court has observed in paragraph nos.20 and 21 as under :

> "20. In order to prove that the electric connection was given to the complainant on 22nd June, 1985 a report of Shri Bachu Tiwary was submitted in which it has been categorically stated that the Junior Engineer had already

given the certificate regarding giving electric connection to the complainant. Exhibit G was produced to show that the complainant did not give any certificate and therefore the certificate was taken from the local Mukhia. An adverse inference was drawn by the courts below for non-production of Shri Tiwary in the witness box. It is an admitted position that exhibit F was the document which clearly shows that electric connection was given to the complainant on 22nd June 1985. It is also not in dispute that the report was submitted to that effect by Bachu Tiwary, the then Junior Engineer. Since Bachu Tiwary was not examined the courts below could not rely on the report of the Bachu Tiwary. However, electric connection was sought to be proved by producing a certificate from the local Mukhia to show that electric connection was given on 22nd June 1985. From the materials on record and also from the exhibit I it is clear that the

work order was signed on 11th June 1985. Exhibit I is the letter said to have been written to the complainant by the Electrical Executive Engineer, Electricity Division, Sitamrhi. Exhibit K is also the report of the Headline Man to show that electric connection was given on 22nd June 1985 and it was re-connected on 8th July 1985 when the meter was brought by the complainant from his residence. The accused-appellant also sought to explain by exhibit L series to show that he was making all efforts for giving electric connection to the complainant and so is exhibit M. From all these documents, we are of the view that electric connection was given to the complainant on 22nd June 1985 and the same was reconnected on 8th July 1985. Therefore, we are of the view that the courts below were manifestly in error in discarding the materials produced by the appellant to show that the electric connection was given on 22nd June 1985

and not on 8th July 1985 whereafter the vigilance enquiry was started against the appellant.

21. Even otherwise, the defence of the accused was more probable and therefore it should be accepted. It was one of the defence of the appellant that because of starting a criminal case against the complainant, the trap case was initiated by the vigilance department at the instance of the complainant. It is not in dispute that a complaint at the instance of the appellant was made against the complainant and another for alleged theft of electricity and the complainant was found guilty which was however set aside in appeal. In the background of this fact and other circumstances as noted hereinafter can it not be said that the defence case was more probable than that of the prosecution case and that in the facts and circumstances and evidence on

record the defence case must be accepted. The aforesaid dramatic case was initiated by the vigilance department at the instance of the complainant. On consideration of the entire materials on record and in view of our discussion made hereinabove, we are therefore of the view that courts below including the High Court had acted in a manner which was not warranted and the defence of the accused-appellant was probable and therefore no conviction could be made against the accused-appellant."

17. Reading relevant page no.587 of the paper-book and some of the paragraphs of the judgment and order under challenge i.e. paragraphs from page no.551 onwards, it is argued by Shri A.D. Shah that material errors have been committed by the learned trial Judge in reaching to the conclusion because some observations and assumptions are *de hors* the nature of evidence and, therefore, they should be ignored as

conjectures. There is no reason or justifiable cause as to why the same currency note was used by the Police Inspector Shri Jadav while arranging the trap on the second occasion. What was the situation of the clothes of the complainant ? There is nothing on record to show that the complainant had put on some clothes other than the clothes he had put on earlier occasion. The anthracene powder marks seen at odd places on the coat of the complainant have not been looked into by the learned trial Judge. Thus, in view of above, according to Shri A.D. Shah, the appellant deserves benefit of doubt.

18. The learned trial Judge has referred to relevant part of the oral evidence of the complainant as well as panch witness in detail. Some part of the portion of the oral version has been mentioned hereinabove while referring to the submissions made by Shri A.D. Shah, learned counsel appearing for the appellant and Shri A.J. Desai, learned Additional Public Prosecutor. The demand of bribe amount of Rs.100/- has not been proved

beyond doubt, is the first main argument advanced by Shri Shah and in support thereof, he has pointed out that there was no reason for the appellant to ask for money because he was not a party directly or indirectly for the delay caused in according sanction for water connection. It is not in evidence that the file was retained by the appellant under any wrong or illogical pretext, otherwise it can be inferred in a bribery case that retention of file without any reason automatically indicates either ill-motive or sheer negligence on the part of the public servant. It is satisfactorily established by leading evidence that the orig. applicant was a tenant and the water connection provided to the orig.applicant was to pass through a burial ground. So it was obligatory on the part of the complainant to see that he brings the necessary pipeline upto the place from where the Ahmedabad Municipal Corporation can tie up and make necessary fitting connecting the water supplied from the source line. It is not in evidence either in the complaint or of any other nature like panchnama, because no such

panchnama has been drawn in the present case in this regard, by which it can be inferred that joining of the pipeline with the water pipe brought upto the public street was existing either on 29th December, 1986, 31st December, 1986, 03rd January, 1987 or 05th January, 1987, means any time prior to making of demand. It is also in evidence that the objections raised by Wakf Committee were not forwarded by the competent authority and the Water Department was intimated about the decision of rejection of the objections raised by the Wakf Committee till November, 1986. It is true that the orig.applicant was entitled to water connection and no technical hitch could have come in the way of the Ahmedabad Municipal Corporation in sanctioning the water connection because the orig.applicant-Munshibhai had erected the flush toilet under the scheme of 80-20. But the objections raised by the Wakf Committee were of sensitive type and it was not possible to go through the burial ground. The Ahmedabad Municipal Corporation authorities are concerned to provide water connection to the orig.

applicant. The appellant was not the authority to grant sanction. It emerges from the evidence that he was an officer who can play an important role in executing the order of sanction of water connection by providing actual connection to the orig.applicant as a member of public. These formalities were over on 26th December, 1986. It is neither the case nor in evidence that the bribe amount was demanded at any time prior to 26th December, 1986. Of course, the complainant has said that he had visited the office of the Ahmedabad Municipal Corporation on three to four occasions but he has not given the date and time of his visit. So before how many days from 29th December, 1986, he had visited the office of the Water Department has not come on record. So every visit paid by him to the office till the objection raised by the Wakf Committee was overruled, is not required to be viewed seriously against the appellant or it would not provide any strength to the evidence led by the prosecution to bring home the charge because it was not within the powers of the Water Department at all. The Court is

supposed to look to the nature of resistance placed by the objectioner and the status of the objectioner in such cases. Providing water connection was within the domain of the supervisory staff. The work was already entrusted to the concerned persons and one Navinbhai's statement was also recorded by the Investigating Officer. The file had already reached to the Despatch Clerk and it is in evidence that the orig.applicant was intimated about the sanction given by the Ahmedabad Municipal Corporation and it has also come on record that the orig.applicant has received the intimation about sanction. For the reasons best known to the complainant on the date of filing of the complaint or while arranging the trap on 31st December, 1986, the Police Inspector Shri Jadav, was not informed about the sanction letter received from the Ahmedabad Municipal Corporation. It is in evidence that the complainant was intimated about sanction given by the Ahmedabad Municipal Corporation and, therefore, there was no reason for the appellant to demand bribe of Rs.100/-. When it is in evidence that

even after receipt of letter of sanction from the Ahmedabad Municipal Corporation, neither the complainant nor the orig.applicant had paid necessary water connection charges to the tune of Rs.200/-; otherwise that amount requires to be accepted by the concerned clerk, and there is no evidence to show that the Account Clerk had accepted the amount. Only if she is permitted to receive the amount, then only she can receive such amount. This Account Clerk namely Nafisaben, has been examined and it is in evidence that her statement was also recorded by the Investigating Officer. It is not the case of the prosecution that the complainant had approached the appellant any time prior to 31st December, 1986 that he has paid the amount of Rs.200/- required to be paid for water connection charges, even then the persons working in the Water Department are not providing the actual connection and at that time, the amount of bribe was demanded by the appellant. So there is some force in the arguments of Shri A.D. Shah that there was no reason for the appellant to ask for bribe. On

the contrary, it emerges that there was no reason for the complainant to go into the cabin of the appellant because the rest of the formalities were required to be completed by the supervisory staff on payment of Rs.200/- with the Ahmedabad Municipal Corporation by the complainant. It is true that the appellant can play an important role in providing actual water connection by taking source pipe to the spot where the applicant had brought his pipe taking the same through the burial ground. In such a situation, merely because the sanction was accorded and the orig.applicant was intimated about the sanction, the appellant cannot get advantage that as there was no reason for asking for bribe amount for him as the sanction was accorded, the case of the prosecution as to the demand of bribe amount by the appellant should be thrown out because the Court is supposed to consider the status of the appellant and the role which requires to be played by the Water Department after sanction of the Water Connection. The subordinate staff of the appellant was to do so many things to take the pipe of the

orig.applicant to the source pipe of the Ahmedabad Municipal Corporation.

19. The evidence of the complainant is not equal to the evidence of an accomplice because there is nothing on record to show that at any time prior to arranging the trap, the complainant or the orig.applicant had agreed directly or indirectly to give bribe for getting the work done from the Water Department or through any of the official working in the Department, including the appellant. However, the complainant is a trap witness and, therefore, interested in the ultimate success of the trap and also in the result of the trial. Some conduct of the complainant that has come on record has made him a person keen to see that the appellant is trapped. In the cross-examination, he has accepted that he is a businessman and doing business of ball-bearing connected with number of social works and was helping the members of the public in getting their works done from the Government and Semi-Government institutions/Departments, including the corporation. He was the President of

"Shaher Seva Samiti" at the relevant point of time. This institution was started in the month of December/January 1986-87. The trap was arranged in the year 1986. One Gulabkhan Pathan is also a member of the Samiti. Of course, the complainant has denied that this Gulabkhan Pathan is an active member of Congress, a political party. He has admitted that he used to visit the office of the corporation and meeting the officers for getting the work done of the persons who used to approach him. But he was not able to point out any other single work for which he had been to the office of the Ahmedabad Municipal Corporation or District Collectorate or at Gandhinagar, where the work was required to be done legitimately till the date of trap in question. He has also admitted that he had been to the Tax Department of the Ahmedabad Municipal Corporation on 17th May, 1986 as some tax was required to be paid. The father-in-law of the complainant for whom water connection was required is a tenant of Sunni Wakf Committee. However, he has admitted that when he sent his employee Razak to obtain the

signature of his father-in-law is not known to him. He had not sent the message that in the form prescribed, the orig. applicant shall have to obtain the signature of assent from a trustee of the Sunni Wakf Committee. He has admitted that no signature was obtained from any of the members of the Wakf Committee. He had affixed his rubber stamp on the application form. According to Shri A.D. Shah, the complainant had no reason to affix his rubber stamp on the form prepared for his father-in-law and, there was serious dispute as to the signature made and thereafter erased, reflected in the form Ex.11. He has also admitted that the house number mentioned is also not correct. The form was given on 17th May, 1986 to the Ahmedabad Municipal Corporation and during his one of the visits, he was informed by one of the persons from the Water Department that the landlord has objected to the application. However, the process to accord sanction is going on. He has shown his ignorance that to get the sanction for water connection whether the xerox copy of the work order issued for erection of flush

toilet was demanded and it was given. It is the say of the complainant that prior to 29th December, 1986, he had met the appellant once. It is not the say that at that time any demand was made by the appellant even indirectly. On 29th December, 1986, the amount was demanded for the first time. No other person from the Water Department had demanded money for the water connection, and he had met superior of the appellant prior to 29th December, 1986, as no progress was being made regarding the application made by the orig.applicant. He has further deposed that he was not knowing that the water connection is already sanctioned prior to 29th December, 1986. The complainant was not even knowing prior to 29th December, 1986 as to whether the water connection charges are being accepted and about the window kept for the purpose. He was also not sure whether he had demanded the file from any of the staff members prior to 29th December, 1986, nor he had attempted to know from the official other than the appellant as to why his application is not being materialised. He was not even sure that when he entered the

cabin of the appellant on 29th December, 1986, whether anybody else was sitting in the cabin. The appellant had taken out the file and had informed him that the water connection has already been sanctioned. He is not sure as to from where the appellant had arranged for the file. The impression created in the mind of the Court is that the complainant was not sure even on the date of deposition as to how the appellant arranged for the file to respond to the query raised by the complainant. But it is certain that the complainant gathered knowledge from the appellant on 29th December, 1986 that the water connection has been sanctioned. There is no cogent evidence that the complainant had ever met Navinbhai of Water Department prior to his meeting with appellant on 29th December, 1986. This Navinbhai is sitting on the loft in the office of the Water Department. The description of the office has not come on record in the deposition of the complainant though certain pointed questions were asked to him. It appears that he met Navinbhai first time on 05th January, 1986. He was not asked by the

appellant that he should see Navinbhai and he was neither annoyed nor disappointed on account of number of visits for which he was compelled to get water connection sanctioned. On 29th December, 1986, it was discussed that he was to pay the amount of Rs.200/- as water connection charges and as per the impression of the complainant, after 29th December, 1986, he met his father-in-law i.e. orig.applicant after about a day, and the applicant was informed about the amount and the complainant was given free hand, and was asked to do as he thought fit. So the evidence given by this witness i.e. complainant, in the cross-examination if read in reference to his deposition qua the events occurred on 29th December, 1986, mainly stated in paragraph no.3 of his deposition, makes the version of the complainant very much doubtful because in the examination-in-chief he has stated that the file was very well with the appellant, and he had expressed his annoyance to the appellant and the appellant had also informed him that the file of the orig.applicant i.e. father-in-law of the complainant, is with him.

In the cross-examination, this version gets destroyed. Of course, the evidence of the complainant as to the demand of Rs.100/- as bribe by the appellant, whether should be accepted as a reliable piece of evidence, requires to be scrutinised, because according to the learned Additional Public Prosecutor, this part of the deposition gets corroboration from the complaint, and when there is nothing on record to show as to whether anybody else had accompanies the complainant to the cabin of the appellant, the say of the complainant should not be viewed with any doubt. But whether any corrborated testimony of the complainant, who had felt annoyed and frustrated, and his weighty application bearing the rubber stamp of his status was not processed and when he had felt personally that the file is unnecessarily retained by the appellant, whether the story of demand of Rs.100/- along with the amount of Rs.200/- which was required to be paid otherwise as legitimate charges as per the rules and regulations of the Ahmedabad Municipal Corporation for the water connection, should

be believed or not, is a question. As per the charge Ex.3, it is alleged that the appellant had demanded the bribe amount of Rs.100/- on 29th December, 1986, and also on 03rd January, 1987, and in furtherance thereof, he accepted the amount of Rs.100/- from the complainant on 05th January, 1987, at about 05-00 p.m. in his cabin situated in the office of the Water Department. In the cross-examination, as the demand of bribe amount of Rs.100/- made on 03rd January, 1987, he has again said that he is not aware as to when he entered in the cabin of the appellant, whether anybody else was present there in the cabin or not and on that day, he had the original letter sanctioning the water connection by the Ahmedabad Municipal Corporation. He had shown the said letter to the appellant. The appellant has not asked the complainant whether he has paid the amount of Rs.200/-. According to the complainant, the appellant had asked whether the complainant had brought money. In the examination-in-chief, he has stated that the appellant had informed him to make payment of amount of Rs.200/- as per the rules and to

give an amount of Rs.100/- to him. Thereafer, he will instruct the supervisor to connect the water tap. In the examination-in-chief he has stated in response thereof that he does not have money to make the payment. So he was asked by the appellant that thereafter he should pay the amount of Rs.200/- on Monday and can bring the amount of Rs.100/- on that day and his work will be done. While in the cross-examination, he has accepted that the appellant had not asked him that though the complainant was asked even then why the complainant did not go with the amount which was required to be paid. It is also stated that on 03rd January, 1987 the appellant had not told him that if he does not pay then how can he get connection. The answer given by this witness in the cross-examination needs appreciation in the background of the events occurred on 31st December, 1986. The crucial question raised before this Court by Shri A.D. Shah, is that when the complainant had already received a letter of sanction whether it was necessary for the complainant to see the appellant. It is not in evidence that even on

31st December, 1986, the orig.applicant Munshibhai had not received the letter of sanction from the Ahmedabad Municipal Corporation. It is clear from the evidence of the complainant that on 31st December, 1986, he had reached to the office of the Ahmedabad Municipal Corporation at about 03-30 p.m. It was possible for the complainant to go to the window for making payment of amount of Rs.200/- as per the rules for the water connection. It is in evidence that cash amount is being accepted upto 04-00 - 04-30 p.m. in the Water Department, and a person who pays the amount of Rs.200/- normally has to approach the supervisor and so if need be, the supervisor intimates/ informs him about necessary articles required to be purchased in connecting the water tap i.e. source pipe to the connection brought by the complainant. No such exercise was done, it appears from the plain reading of the complaint. The complainant has admitted that nobody had prevented him or directed him otherwise not to pay the amount of Rs.200/- on that day. The complainant is not even sure whether he had

made any attempt to pay the amount of Rs.200/- on 31st December, 1986. On 31st December, 1986, the complainant came to know, as to who had already arranged the trap and was accompanied by the panch no.1, that the appellant may not come because he is on half day leave. According to the complainant, on getting the information from the person who was sitting outside the cabin, he and panch returned to the Khamasa Police Chowki and informed the ACB Police Inspector Shri Jadav. The muddamal currency note which was kept in the pocket of the complainant, thereafter was taken back. On the contrary, it is in evidence that on 31st December, 1986, he had not attempted to make payment of Rs.200/- in the Water Department as per the rules, nor he had met the said Navinbhai who sits on the loft in the office of the Water Department. It appears from the entire set of evidence that this Navinbhai and some of the staff members were sitting on such a loft i.e. popularly known as “Maliya”. On that day, he had not even tried to get the file from Navinbhai. He had admitted that on 03rd January, 1987, it had not happened because

the time was over and the amount of Rs.200/- was not accepted. It was possible to argue by the appellant hat no attempt either to pay the amount of Rs.200/- or to see Navinbhai was made on 31st December, 1986 by the complainant. According to this witness, he does not recollect as to whether anybody had intimated him that he should pay the amount of Rs.200/- for water connection on 31st December, 1986. He has stated that as “Saheb” was not there he had not paid the said amount. This evidence indicates that he was aware on 31st December, 1986 that he will have to pay Rs.200/- initially and only then the work of actual instalment of water connection would progress. The presence of appellant in the office had no relevance for paying the amount of Rs.200/-. On close reading of paragraph nos.21, 22, 23 and 24 of the cross-examination, it emerges that the complainant was keen to have the appellant in the office and was anxious to see that the appellant is trapped. His visit on 31st December, 1986, to the office of the Water Department of the Ahmedabad Municipal Corporation even if is believed then it

appears that it would be for assertion as to whether the appellant is there or not and/or whether he would be available on 05th January, 1987 or not. The calendar indicates that 04th January, 1987 was Sunday. So 03rd January, 1987 would be the first Saturday, meaning thereby, a working Saturday. So whether the complainant should be believed as to his visit in the cabin of the appellant on 03rd January, 1987, or not, as the same becomes hazy and doubtful in view of the events that had occurred on 31st December, 1986 i.e. failure of the trap arranged on account of the complaint given to the ACB. On 31st December, 1986, the muddamal currency note was taken back by Shri Jadav. Undisputedly, the said currency note was tendered by the complainant so that the same can be used again in laying the trap. Nothing has come on record as to whether it was decided on 31st December, 1986 itself that the complainant should go in the office again and to see the appellant or the ACB Police Inspector Shri Jadav had instructed the complainant accordingly. There is nothing in evidence of Shri Jadav that he had inquired

from the complainant as to whether he has paid the amount of Rs.200/-, which is required to be paid in the office of the Ahmedabad Municipal Corporation when he was sent with panch witness. Whether the complainant when sent and the appellant being present in the office either on his direction or otherwise whether the complainant could have paid the amount of Rs.200/- and he was also given that amount because it was equally impossible that the appellant may have asked the complainant to see Navinbhai and to get the file from him and to pay the amount of Rs.200/- forthwith before the window accepting the amount which gets closed at about 04-00 – 04-30 p.m. so that the rest of the formalities can be completed by Navinbhai because it has come on record that on payment of Rs.200/- all subsequent formalities were to be carried out by the subordinate staff on following the instructions given by the supervisor like Navinbhai. This could have been done on 03rd January, 1987 also. The crucial question is why the complainant had gone without money, even Rs.200/-, on 03rd January, 1987 in the

office of the Ahmedabad Municipal Corporation. It is difficult for the Court to accept the words uttered by the complainant that he had been to the office of the Water Department on 03rd January, 1987, without even taking the amount which was otherwise required to be paid in the Water Department. The complainant appears to be a lier on this point and he had given impression that even if he had gone to the office of the appellant on 03rd January, 1987, then that visit was not a bona fide visit in the capacity of a representative of the orig. applicant-Munshibhai but as a person as to ascertain whether now any arrangement to trap the appellant is possible or not. In paragraph no. 26 of his deposition, the complainant has admitted that the file of the sanctioned connection of the orig.applicant was with the supervisor. It is claimed by the complainant that the appellant had informed him that the file was with the supervisor on 03rd January, 1987. He was also aware that for paying the amount of Rs.200/-, he should have file with him. The ACB Police Inspector Shri Jadav was also informed by the complainant

that the file is with supervisor and the appellant had informed the complainant that as the file is with the supervisor, he should take the file from him and should pay the amount. This evidence indicates that even on 03rd January, 1987, the file was with supervisor. When the file went to the supervisor, has not been unfolded by the prosecution but if the evidence is read as a whole including the evidence of the defence witness, it appears that from or after 26th December, 1986, the file had reached to the subordinate staff for completing necessary formalities and intimating the orig.applicant. It had once gone to the Despatch Department and there is nothing on record to show which can be said to be satisfactory in nature that the file had thereafter ever returned to the cabin of the appellant. So for the sake of argument, if it is accepted that the appellant had informed the complainant on 03rd January, 1987 that the file is with supervisor then he could have asked the appellant as to whether he can pay the amount today i.e. on 03rd January, 1987, but on the contrary, the

complainant conveniently avoided the payment of amount of Rs.200/- on 03rd January, 1987. The story unfolded by the complainant in his examination-in-chief that the file was retained by the appellant, gets falsified from the answers given by the very witness in the cross-examination. On the contrary, it was possible for the complainant to pay up the amount on 31st December, 1986. According to the complainant, as the appellant was not there, he had not paid the amount. The presence of appellant was not necessary for making payment of Rs.200/- even on 31st December, 1986. It appears that till 29th December, 1986, as no formal written intimation had reached to the residence of the orig.applicant, or the father-in-law of the complainant had not informed the complainant till 29th December, 1986, that now the water connection has been sanctioned and he has received the intimation to that effect, the complainant had decided to trap the appellant assuming that probably he is the person responsible for not getting his file processed, otherwise he had no reason to suppress that when the water connection was

applied, the orig.applicant was in arrears of payment of municipal tax and the landlord Wakf Committee shall resist the application filed by orig.applicant Munshibhai by filing a written objection. The redressal of the objection placed by the landlord Wakf Committee was neither within the powers of the appellant nor he could have helped the complainant for want of payment of municipal tax and the amount of Rs.200/-. So there is some force in the argument of Shri A.D. Shah that the complainant was determined to trap the appellant. So the complainant being a trap witness, his evidence if scanned closely then it shall have to be observed on appreciating the evidence of the complainant as to the demand of bribe made by the appellant, is hazy and it would be risky to accept the say of the complainant as reliable piece of evidence. The learned trial Judge has accepted this part of evidence as a reliable piece of evidence mainly on surmises based on subsequent event pleaded by the prosecution about acceptance of muddamal currency note. It is true that acceptance/ receipt of bribe amount or any

illegal gratification by itself is implied proof of demand. The hidden demand emerges on such acceptance. But to prove that aspect, the prosecution is again under obligation to lead cogent and reliable evidence to the satisfaction of the Court. So the recovery of the muddamal currency note or any article or thing accepted as illegal gratification by itself cannot be used as a strong corroborative piece of evidence in support of the evidence of initial demand. In the say way, as the appellant was one of the key officers in granting sanction and to actually implement the sanction granted by getting the the source pipe joined with the end of the pipeline brought by the applicant-consumer. But this aspect would not help the prosecution in building up a story of demand of Rs.100/-. The learned trial Judge has observed that the letter dated 26th December, 1986 Ex.8, informing the complainant to pay the deposit amount between 03-00 p.m. and 05-00 p.m., and further proceedings will be done thereafter, was posted on 30th December, 1986. But there is nothing in evidence that if really the said

letter was posted on 30th December, 1986, then who was responsible for the delayed despatch of letter Ex.48. As discussed earlier, it has emerged that the file must have remained either with Shri Joshi or Navinbhai. Even the appellant or somebody from the Ahmedabad Municipal Corporation had inquired from the Muslim Wakf Committee, whether it bears the signature of the Committee Member or not, would not be helpful to the prosecution in proving the fact of initial demand. The delay that had taken place in sanctioning the water connection, though the applicant-Munshibhai had constructed flush toilet under the scheme of 80-20, would not go against the appellant. The learned trial Judge in paragraph no.15 of the judgment has considered this delay aspect i.e. time consumed by the concerned authority from 17th May, 1986 to 26th December, 1986, as circumstance against the appellant. It is very likely that putting the signature on behalf of the Sunni Wakf Committee and scoring off the very signature from the application form Ex.1, may have taken some time in getting the clarification, and if it is the practice

developed by the Ahmedabad Municipal Corporation to have consent of the landlord, if the tenant is the applicant for water connection, then all relevant inquiries obviously can be made by any of the officials of the Ahmedabad Municipal Corporation. In paragraph no.19 of the judgment, the learned trial Judge has observed that :

> *"19. Now, the question is whether the story of demand by the accused from the complainant on that day is acceptable or not. As discussed earlier, the demand is not totally improbable, which could be straightway rejected. In touchstone of probability it cannot be said that such a demand is improbable."*

20. According to me, though the detailed cross-examination has been referred to in paragraph nos.19 and 20 of the judgment under challenge, there is no positive finding to the effect that there is cogent and convincing evidence about the demand of bribe made on 29th

December, 1986. On the contrary, when it has come on record that the complainant had informed the orig. applicant i.e. his father-in-law, about the alleged demand of Rs.100/-, it was not impossible for the prosecution to bring that corroborative piece of evidence on record through orig.applicant Munshibhai before whom the complainant had made disclosure of the demand of bribe/illegal gratification for the first time. This orig.applicant Munshibhai ought to have led evidence to the effect that he had entrusted the work to his son-in-law i.e. present complainant, and he had been to the office on 29th December, 1986 in pursuance of the work for obtaining sanction of water connections and his son-in-law had informed him that the appellant was demanding the amount of Rs.100/- as bribe amount and he had assented directly or indirectly to take any decision which the complainant deems fit. According to him, even such evidence would not have helped the prosecution much on account of the infirmities which are found in the evidence of the complainant himself qua the alleged demand of

amount of bribe made on 29th December, 1986.

21. The answers given by the complainant in reference to the conversation that had taken place on 29th December, 1986 between him and the appellant, are inconsistent to the say of the complainant in the FIR Ex.12. Before the Court he has said that he had never felt annoyed or depressed because he was compelled to visit the office of the Water Department of Ahmedabad Municipal Corporation for sanction of water connection and on the other hand, it is said in the complaint that after entering into the cabin of the complainant on 29th December, 1986, he had asked a straight question to the appellant that he has come for water pipe connection that he has paid many visits to the office of the Water Department for the purpose and whether he is giving connection or not, and at that time, he was responded that the file of orig.applicant Munshibhai is with him only and the water connection is sanctioned but the work shall not be done only on that count. So before making the alleged demand of Rs.100/-, the

conversation between the appellant and the complainant had not remained in good taste. Even then before the Court, the complainant has attempted to put curtain on this aspect. The point obviously can be considered, whether the evidence as to the demand of bribe made by the appellant on 03rd January, 1987, when he had paid the visit to the office of the Water Department, can be considered as corroborative piece of evidence in support of the evidence as to the demand made on 29th December, 1986. The answer would be obviously in affirmative, provided that there is sufficient evidence to show that while putting the demand of Rs.100/- again on 03rd January, 1987, there is reference of the demand made earlier on 29th December, 1986 and the evidence as to the demand of Rs.100/- again on 03rd January, 1987, is found proved on the strength of evidence. But in the present case, even there was nobody with the complainant when he allegedly met the appellant on 03rd January, 1987. The complainant before the Court is a person who had not visited the office of the ACB immediately on the second day of the demand

made by the appellant on 29th December, 1986. 29th December, 1986, was Monday and the complaint could have been lodged latest by 30th December, 1986. However, the complaint has been filed on 31st December, 1986. It is not the case of the prosecution that attempt to pay the amount of Rs.200/- for water connection was made on 30th January, 1986 because the complainant was already informed about sanction of the connection verbally on his visit on 29th December, 1986. So there was no question of formal receipt of the communication by the orig.applicant Munshibhai. The file in the Department was required to be taken to the window so that the concerned clerk can accept the amount and issue the receipt. It is likely that feeling annoyed by the demand of Rs.100/-, the complainant may have decided to file the complaint straightway. So the complaint on 31st December, 1986, cannot be said to be a delayed complaint. But when the complainant was determined to make the complaint to the ACB and had arranged the trap of 31st December, 1986, which had failed because of absence of

the appellant in the office since he was on half day leave, then what prevented the complainant in taking one independent witness with him when he paid visit again to the office of appellant on 03rd January, 1987. The crucial question which was required to be considered by the learned trial Judge was that the visit on 03rd January, 1987, paid by the complainant to the office of the appellant whether was a voluntary visit or the visit at the instance of the ACB Police Inspector Shri Jadav. Since Shri Jadav had retained the muddamal currency note with him on 31st December, 1986, then normally the complainant would not have paid any visit to the office of the appellant on 03rd January, 1987. It is very likely that the said Police Inspector Shri Jadav and the complainant, both might have thought to ascertain as to whether the appellant continues with the demand or not. Both or anyone of them if had thought about this aspect, but for the reason, the complainant had visted the Water Department on 03rd January, 1987, then an independent witness could have been sent to accompany the

complainant to collect corroborative piece of evidence on the point of initial demand. The complainant may not be aware as to what is the value of the evidence on the point of initial demand in ACB trap case but the Court can presume that at least Shri Jadav was a well informed person but reading the evidence of complainant as well as the said Shri Jadav simultaneously, it appears that Shri Jadav was not informed or aware about the visit of the complainant to the office of the appellant in the afternoon hours on 03rd January, 1987. So again though it was possible for the complainant to give reliable independent evidence to the prosecution agency to prove the demand on 03rd January, 1987, whether the words of the complainant should be accepted as gospel truth or should be viewed with doubt, is a question. It appears that this question has not been appropriately appreciated by the learned trial Judge and in absence of this factual contingency, the evidence of demand made on 03rd January, 1987 cannot safely be used as corroborative piece of evidence of the initial demand made on 29th December, 1986. In

the complaint dated 31st December, 1986, it is mentioned specifically that the complainant was informed that as per the rules, he will have to pay the amount of Rs.200/- and he may pay that amount at this stage. So there was no reason for the complainant to ask similar question to the appellant on 03rd January, 1987, as to what happened to his water connection, especially when the amount of Rs.200/- as per the rules was not paid till that moment. Neither in the deposition nor in the subsequent complaint made on 05th January, 1987, the complainant has stated that on 03rd January, 1987, he had paid visit to the office of the appellant and at that time, he had repeated the earlier demand of Rs.100/- by referring to the earlier conversation, which was made on 29th December, 1986; otherwise normally the response of the appellant would be that inspite of his instructions if the complainant has not paid the amount of Rs.200/- as per the rules and Rs.100/- to the appellant as allegedly asked earlier on 29th December, 1986, nothing could be done and he would have retained the file with him. At

least the corrupt officer would positively try to remind the earlier conversation. But there is no reliable evidence which can be said to be consistent on this point that on 03rd January, 1987, the appellant had referred to the earlier conversation of 29th December, 1986 even after knowing from the complainant, as said by the complainant in the second complaint dated 05th January, 1987, that he has not paid the amount and has not paid even the amount of Rs.200/- as per the rules. The defence witnesses examined have been cross-examined by the prosecution. Merely because the witness is a defence witness, his evidence cannot be considered legally or of inferior quality than of the prosecution witness, because the witnesses are coming to the Courts or are being called in the Courts to depose so that they can assist the cause of justice. Unless otherwise observed against a particular independent witness on account of any special reason or cause, a witness even cannot be condemned directly or indirectly. So it was possible for the prosecution to bring on record by cogent and convincing evidence that

the complainant visited the Water Department on 03rd January, 1987 and had met the appellant also in his cabin. A submission has also been made by Shri A.D. Shah, learned counsel appearing for the appellant, that for what of reliable evidence except the bare words of the complainant, the learned trial Judge ought not to have accepted that the complainant had visited the office of the appellant on 03rd January, 1987 and at that time also, the appellant demanded the amount of Rs.100/- again. The visitor on 03rd January, 1987 was not a person other than the person who had met the appellant on 29th December, 1986, from whom the bribe amount of Rs.100/- was demanded. So whether it was necessary for the appellant to repeat the demand on 03rd January, 1987, especially when, as discussed earlier, the filed had already left the cabin of the appellant much prior to his visit on even 29th December, 1986, is a question. So there is no cogent and convincing evidence about the visit of the complainant to the Water Department on 03rd January, 1987 and especially, in the cabin of the appellant. It is expected that the

prosecution should try to prove the case beyond all reasonable doubts and that too by all best pieces of evidence. In the same way, the prosecution is also under obligation to collect all possible best evidence so that the same can be produced before the Court. Here in the present case, the complainant and ACB Police Inspector Shri Jadav were determined to continue their attempts to see that the trap succeeds. Any one of the panch witnesses who was called on 31st December, 1986, could have been sent with the appellant in the cabin of the appellant on 03rd January, 1987. It is very likely that the complainant might have even asked such an independent person to go out of the cabin as it was allegedly said to the panch witness in the present case on 05th January, 1987, i.e. on the date of trap. But at least the evidence of such an independent witness could have helped the prosecution a lot that the complainant did enter the cabin of the complainant on 03rd January, 1987, and the Court could have accepted reasonable good convincing explanation from the appellant as to what he has to say about the oral evidence

given by the complainant as to the conversation made between him and the complainant; otherwise denial of the appellant as to the visit of the complainant on 03rd January, 1987 cannot be thrown away saying that the explanation is either false or unacceptable and it is a bare denial. So the Court is inclined to accept the argument of Shri A.D. Shah, learned counsel appearing for the appellant, that this is a case where there is no sufficient evidence as to the initial demand of amount of bribe by the appellant and it is not safe for this Court to believe the complainant who has posed himself to be a social worker or an activist helping the people in getting their works done in various Government and Semi-Government departments. Of course, he has not successfully pointed out any such work done by him on earlier occasion but when the complainant has accepted that he is keen to do such or similar works and he himself is a trap witness, the evidence of such a complainant should be dealt with very cautiously.

22. One more possibility that I have kept in mind while recording the above finding is that there is no cogent and convincing evidence about the initial demand and this possibility is hat the alleged visit on 03rd January, 1987 even if was made by the complainant, some independent person probably one of the panchas who was called on 31st December, 1986, must have been sent with the complainant, but for want of any specific demand of bribe amount from the appellant, the prosecution may have kept the curtain on that aspect and, therefore only, none of these two panchas has been examined by the prosecution, otherwise, they could have corroborated the say of the complainant about the facts stated by the complainant to them at the time of drawing first part of panchnama on 31st December, 1986.

23. It is settled that the Investigating Officer has to act objectively and in a transparent manner; firstly while scrutinising the genuineness of the complaint filed by the complainant; secondly in laying down the trap; and thirdly in selection of panchas and also

while drawing second part of panchnama in the event of their success or failure of the trap and during investigation in the background of the explanation, if any, given by the public servant who is trapped. Now one more aspect which also requires consideration in view of various decisions of this Court as well as the Apex Court about selection of powder, otherwise invisible, to have some scientific proof as to the acceptance of the bribe amount because it is observed that instead of anthracene powder, phenolphthalein powder should be used. So the Court while evaluating the evidence on the point of acceptance can have more reliable data in the nature of scientific assistance. In the present case, there is nothing in evidence either of the complainant or Investigating Officer Shri Jadav as to what was done by them on the day next to the day of failure of the trap. It was possible for the Investigating Officer Shri Jadav to collect the half day leave report of the the appellant and the same could have brought relevant circumstance either against the appellant or in favour of the appellant

because if the complainant was really asked to come on 31st December, 1986 on the date of initial demand i.e. on 29th December, 1986, the appellant could not have proceeded on leave in the second part of the day or he could have called the complainant in the first part of the day on 31st December, 1986 before he left the office. So when such a leave report was placed and sanctioned, the same could have drawn some light on the conduct of the appellant; otherwise a public servant accepting some amount would try to keep himself available in the office. So the non-availability of the appellant in the office is a fact which can be viewed as a shadow of doubt on the theory of the complainant that he was called by the appellant with the bribe amount on 31st December, 1986, and that too in the second part of the day. 31st December, 1986 being the last day of the year, number of Government and Semi-Government employees, it is experienced, are tempted to enjoy the casual leave if they have not enjoyed it or used throughout the year. So the sudden departure of the appellant from his office by

placing leave report on last Monday may have gone against him. It appears that there is no investigation in this direction. The Investigating Agency is supposed to gather evidence with regard to all the relevant facts from all the corners so that they can be placed before the Court. It is true that all the evidence collected by the Investigating Agency is not required to be placed before the Court and the Investigating Officer is at liberty to select the piece of evidence on which he intends to rely while chargesheeting the appellant. But he is not enjoying the privilege to collect evidence of his choice, otherwise it would lose element of objectivity and transparency. Therefore, the evidence which was collected and not produced before the Court as a part of final report the accused, sanctioning authority in ACB cases and lastly the Court, if need be, can consider such collected facts during the course of investigation. In this background, the Police Inspector Shri Jadav had remained inactive on three consecutive working days i.e. 01st, 02nd and 03rd January, 1987. Even as per the say of

the prosecution and the complainant, the complainant had gone to the office of the appellant on 03rd January, 1987, which can be said to be a day of some activity by the complainant but as discussed earlier, it would be unsafe to rely on this part of evidence of the complainant for want of satisfactory corroboration. It is true that prosecution can argue and it was argued before the learned trial Judge that the complaint of 05th January, 1987 can be used as corroborative piece of evidence in support of the say of the complainant, but then the complainant ought to have gone to the Police Station immediately on 03rd January, 1987 on repetition of the demand or latest y 04th January, 1987. There is no holiday in the Police Station. At least additional complaint could have been taken by Shri Jadav on the later part of the day on 03rd January or least on 04th January, 1987. So the additional complaint of 05th January, 1987, whether should be viewed as a delayed complaint is also a question but without commenting on that part being a case of not that grave delay, the Court should be cautious

while using the contents of the complaint on 05th January, 1987 as corroborative piece of evidence to the say to the say of the complainant and Shri Jadav.

24. As observed earlier, the ACB Police Inspector Shri Jadav ought to have taken a fresh complaint on 05th January, 1987 and the papers including the complaint of 31st December, 1986 and the first and second part of panchnama drawn on that day, could have been placed as corroborative piece of evidence in support of the complaint recorded on 05th January, 1987. If the Court treats the act of recording further complaint on 05th January, 1987 as a procedural error and ignorance, for the sake of argument, even then it was incumbent upon the Investigating Officer to explain satisfactorily as to why the currency note of the complainant smeared with anthracene powder was retained by him. To avoid misuse of the said article, the complainant could have been given one another currency note of Rs.100/- and altogether a different currency note could have been used for preparing the first part of panchnama in presence of the panchas called.

The panchas called on 31st December, 1986, are different set of panchas and the panchas examined before the Court has said that the anthracene powder was applied on the muddamal currency note which is totally contrary to the story placed by the prosecution because, according to the prosecution, the very currency note which was smeared with anthracene powder on 31st December, 1986, was used and from 31st December, 1986 evening till 05th January, 1987, it was retained by Police Inspector Shri Jadav. So the number of currency note mentioned in the first part of panchnama drawn on 31st December, 1986 is the same which was recovered from the appellant on 05th January, 1987. But the first part of panchnama drawn on 31st December, 1986 or any of its contents have not been proved by panch witnesses. If course, the complainant and the Investigating Officer have stated so. The number of the currency note, of course, is mentioned in the first part of panchnama (page no.187) drawn on 05th January, 1987 between 15-30 hrs. and 16-00 hrs. at ACB Police Station Ahmedabad. The experiment of ultraviolet lamp

was made in the office during these hours by Police Constable Shri Bhavanji Nathuji Gor. But while doing the experiment with ultraviolet lamp on 05th January, 1987, there is no reference about the place from where the Police Inspector Shri Jadav had taken out the muddamal currency note of Rs.100/-. On the contrary, it appears that the note was shown by Shri Jadav himself to the panchas and thereafter it was handed over to the Police Constable Shri Bhavanji to do experiment with ultraviolet lamp with a view to demonstrate the effect of anthracene powder to the panchas so that the panch witnesses can give evidence in this regard. Interestingly, in the second part of panchnama drawn on 05th January, 1987, it is clear that Shri Jadav had occasion to touch the muddamal currency note smeared with anthracene powder but there is no reference of washing of hands by the said Shri Jadav on completion of the experiment with the ultraviolet lamp by Police Inspector Shri Jadav like Police Constable Shri Bhavanji. Such reference could have been made the first part of panchnama when it has been made for

Police Constable Shri Bhavanji. It is in evidence that the complainant had put on the same coat that he had put on on 31st December, 1986 when he had gone to the office for the trap arranged on that day. But there is no reference as to the description of other clothes put on by the complainant on 31st December, 1986 or on 05th January, 1987, and there is nothing in evidence to show that the clothes put on by the complainant on 31st December, 1986 were different then the clothes put on by the complainant on 05th January, 1987 and when the case of the prosecution mainly rests on marks of anthracene powder found on the hands, pant pocket and on a chit recovered from the pant pocket of the appellant, the presence of anthracene powder was possible and/or probable at how many places over and above the muddamal currency note and the pocket of the complainant, wherein the Police Constable Shri Bhavanji had kept the muddamal currency note on 05th January, 1987, is required to be considered and when it is in evidence that he had put on the same coat which he had put on on 31st December, 1986, and

on that day, on completion of second part of panchnama or during drawing of panchnama, there is no reference of washing of hands either by any one of the panchas of the panchnama drawn on 31st December, 1986 or by Shri Jadav or by the complainant, has not come on record as satisfactory piece of evidence, the Court while evaluating the evidence ought to have remained on guard because the presence of anthracene powder found on the shirt of the appellant can be used as corroborative piece of evidence about transaction/transfer or passing of muddamal currency note. The person who put the currency note in the shirt pocket of the complainant was Police Constable Shri Bhavanji as per the panchnama and as per the say of the complainant and Investigating Officer. So firstly to widen the pocket of the shirt somebody including Bhavanji must have touched the coat put on by the complainant. The same situation would have arisen on 31st December, 1986, even while taking out the currency note from the shirt pocket or pocket of the coat, the coat must have come in contact of anthracene powder. So the presence

of anthracene powder on the coat found while drawing second part of panchnama would not help the prosecution in any way.

25. The prosecution has placed reliance on the evidence of the complainant as well as panch no.1-Narendrakumar M.Soni (PW-2) Ex.16, to prove the acceptance of muddamal currency note of Rs.100/- from the complainant after some conversation. There is no major discrepancy or a conflict which can be termed as major inconsistency so far as the alleged conversation that had taken place between the complainant and the appellant is concerned. The learned trial Judge has considered this aspect and has given some weightage while accepting the version of the panch as well as complainant in this regard and at the time of reaching to a conclusion that this is a case where the prosecution against the accused requires to be drawn. But when it has been demonstrated by Shri A.D. Shah by leading evidence that the say of the panch about listening or overhearing the talk between the appellant and the complainant should not be

accepted as reliable piece of evidence and if the Court finds that there is some strength in this submission and with all probabilities, the panch may not have heard the conversation in such a detail, then it automatically becomes unsafe to place reliance on the words of the complainant about the nature of conversation taken place between him and the appellant. The crucial question would be that if the appellant was innocent and had no intention to accept any amount from the complainant, then what was the necessity to send a companion of the complainant out of his cabin. Sending the person accompanying the complainant out of the cabin or any direction to send the person away so that he may not overhear the conversation or see the transaction can be said to be a conduct not consistent with the innocence. Normally, an innocent public servant would not ask a person like the complainant as to who is the person accompanying him. Such conduct of a public servant may go against him in a given case. But before using such circumstance against the appellant, the Court should consider other

aspects also, like the space where the public servant is working; availability of chairs, if available; and the activity of the appellant at the time when the complainant with accompanying panch approached the appellant as planned by the Investigating Officer that when the complainant entered the cabin of the appellant, he had requested the appellant to do his work at the earliest. Meaning thereby, the appellant was not sitting idle but doing some work and so after offering the chair to the complainant, he must have continued with his work and, therefore only, the complainant would have requested him to attend the complainant by giving him priority. Undisputedly, there was one chair and as discussed earlier, his cabin is a small cabin and when a public servant is working when a visitor enters in a tidy cabin, says the person accompanying the complainant to go outside, cannot be said to be a conduct inconsistent to the innocence. So this stand would not help the prosecution in the present case. Now the say of the prosecution is that the conversation was overheard which had taken

place between the appellant and the complainant after leaving of the cabin by the panch no.1. Here is the major conflict. There is no positive evidence as to the actual distance between the chair of the appellant and the probable place where the panch was allegedly standing to see and listen the things happening in the cabin. As mentioned earlier, considering the scope of overhearing of the talk by the other officer sitting in the adjacent cabin as there was a whole, where common telephone was placed, the appellant would not have asked anything or ought not to have discussed anything which can be said to be loudly. It is true that the person who concentrated on the conversation and is able to see the person conversing with each other can listen but for that it should be proved beyond reasonable doubt that the panch no.1 was able to see the happenings inside the cabin and also was able to concentrate. So he had to peep inside the cabin and to listen, both. It was busy hours in the office of the appellant and it must not be an atmosphere of pin-drop silence. In this background, the

conflict brought on record by Shri A.D. Shah as to the evidence led by the prosecution with regard to the crevice of the half flap door becomes very relevant. At one place, Shri A.J. Desai, learned Additional Public Prosecutor, has also fairly accepted that there is some inconsistency in the evidence so far as the type of door of the cabin is concerned because the defenceside has satisfactorily brought on record that the cabin had a half flap door. It was one flap and the other cabins which were also there were also of the same type. It is true that the photograph produced before the Court should not be considered as a reliable piece of evidence because they have been taken after a lapse of several months and after filing of the chargesheet. So even if the evidence produced by the appellant in the nature of photograph is ignored, inconsistency in the evidence of the prosecution has remained on record and the learned trial Judge has not considered this crucial aspect. An error has been committed, keeping in mind of the principle laid down by the Courts in reference to “appreciation of evidence”. The

discrepancy if has cropped up while leading evidence requires to be resolved by the party at whose instance the discrepancy has cropped up; otherwise the otherside can use this discrepancy if it is useful to him. Under the very principle, the appellant can place or develop the defence theory on such unexplained or unresolved discrepancy. At more than one place, it is referred that the flap door was fixed on the frame of the door and the panch no.1 was peeping inside the cabin through the crevice between the frame of the door and flap of the half door. Whether it was from joint side of the flap which was fixed with the frame or from the otherside which obviously remains flexible with the otherside of the frame of the door. There is nothing their in the panchnama or deposition that whether the panch no.1 was standing on the right side of the frame or left side of the frame, and there is also nothing on record to show that Shri Jadav himself had ascertained prior to or after drawing of second part of panchnama as to whether it was physically possible to visualise the things from the crevice as

alleged by the panch no.1. Of course, such satisfaction could have been said to be subjective satisfaction of the Investigating Officer but in the justice delivery system at very limited place, the subjective satisfaction of an officer also has some importance and the Courts are objectively considering such subjective satisfaction of the Investigating Officer, say like the custom officials. The subjective satisfaction of the Investigating Officer in such eventuality obviously comes on the touchstone of objective test during trial. But in the present case, there is nothing on record that such efforts were made by Shri Jadav or any of the officer accompanying him as a member of the party, otherwise he could have been examined. The second infirmity is as to the number of flap doors because it is inferable from the evidence that the cabin of the appellant had only one flap door and the say of the panch no.1 before the Court is that he had seen the incident by placing his eyes on the crevice which was there between the two flaps of the half door of the cabin of the appellant. For

this purpose, the Court has carefully considered the contents of the panchnama, version of the panch, in this regard and the evidence of the Investigating Officer Shri Jadav. It is difficult for this Court to accept the say of Shri A.J. Desai, learned Additional Public Prosecutor, that there is nothing on record to show that it was only one flap half door and the Court should not enter into the controversy whether it was half door with two flaps or one flap. According to me, this would matter much if it was half door with two flaps then there was scope of having two crevice; two on both sides with the frame and the third in the centre and when it is claimed by the panch in his deposition that had seen from the crevice that was there between two flaps of the door then the angle would be, as discussed, of the sitting position of the appellant and the complainant, etc., the panch no.1 would be practically at 180 degree. It would be possible for the appellant to assess that somebody is standing in the centre of the door and that person may be peeping inside. If the appellant under

suspicion had sent the accompanying person i.e. panch no.1 outside the cabin then he would not tolerate anybody standing immediately outside the cabin and he would first inquire as to who is the person standing in the midst of the door. In the same way, it is also possible that because of the obstruction of the person just sitting opposite the appellant, the appellant might not have noticed about the person standing just opposite and in between two flap doors, but then in that situation, the evidence of panch no.1 would become more improbable about the things that he has described while deposing before the Court.

26. In paragraph no.4 of the deposition, the panch no.1 (PW-2) has stated that as he was asked to sit outside, he had come out of the cabin and there is a half shutter on the cabin of the appellant. So after coming out he stood opposite to the half flap door so that he can see from the crevice. Thereafter, the appellant asked the complainant as to what about his money and the complainant had

replied that “Sir, I have brought.” At that time, the appellant had asked him to put the same in the drawer and at that time, the complainant requested the appellant that the appellant may accept the amount, as there was no problem. The appellant thereafter extended his hand, the complainant took out the currency note and gave it to the appellant. The appellant accepted the said amount while sitting in the cabin with his left hand and put the same in his left side pocket. The complainant thereafter came out of the cabin and as instructed he gave the signal by putting off his coat. In the cross-examination(paragraph no.30), he has stated that one can see in the cabin of the appellant by raising toes from the outerside of the shutter door. This shutter was in two parts. He has denied that it is one flap shutter door, and it was fixed on the right side of the door frame. He was seeing inside the cabin from the crevice which was there between two flaps of the shutter. It is not his say that he has seen the event by raising his toes and it was possible to peep inside the cabin in

that way in the positive way during his examination-in-chief. The raiding officer Shri Jadav in paragraph no.20 of his deposition has denied the suggestion that the shutter of the cabin was of one door and was fixed on the right side frame of the door. On the contrary, he has said that the flap doors are two and both flap doors were fixed on both sides of the frame of the entry door of the appellant's cabin. The flap doors were opening from middle and one can enter by that way in the cabin, and the crevice which was there in the flap door was just opposite to the chair of the appellant (paragraph no.22). The panchnama is tendered in evidence by the prosecution and the same is exhibited. There is reference of half shutter of the cabin of the appellant and the panch no.1 was at one side of the flap door and from there he listened the conversation that had taken place between the complainant and the appellant. It is specifically mentioned in the panchnama that as per the panch, he had seen the things narrated by him from the crevice of the half shutter and the frame of the door. So as per

the panchnama, the panch was present at one of the sides of the frame of the door, and he claims that he saw the event occurred in the cabin from the crevice between the door frame and the half shutter. There is no reference of two different flap doors of the half shutter in a detailed panchnama prepared describing the details of the cabin of the appellant. Some description of the cabin and its half shutter is also there in the last but one paragraph of the panchnama. In that part of the panchnama also, there is no reference of two different flaps of the half shutter, otherwise the panch while drawing panchnama could have narrated that he say the events occurred in the cabin from the crevice between the half shutters. It is true that a panch may have committed some error while describing the type of half shutter which was there at the cabin of the appellant and the conflict as to the description of the half shutter given in the panchnama and in the deposition of the panch would not have created a very big confusion but when the Investigating Officer himself has also attempted to modulate version

only with a view to corroborate the say of the panch by introducing the theory that the shutter of the cabin had two different flaps fixed in two different frames of the door, would make the version of the panch of an interested witness.

27. As per the settled legal position, the panch witness is not a trap witness, and his deposition should be appreciated as an independent person but any circumstance if is able to peak that he is leaning towards prosecution or the appellant than his evidence should be appreciated accordingly. In the present case, the panch witness has developed a theory that the half shutter of the cabin had two flaps and he had visualised the incident i.e. passing of the muddamal currency note from the centre of the flap doors, it being two flap doors half shutter, is inconsistent to the narration of the half shutter given in the panchnama and the attempt of Shri Jadav to lead evidence contrary to the narration of the half shutter door of the cabin of the appellant mentioned in the

panchnama only with a view to corroborate the version of the panch witness, makes the evidence of the prosecution doubtful in this regard. It makes the case of the prosecution doubtful that panch no.1 had seen the event of passing of muddamal currency note to the appellant. The learned Additional Public Prosecutor ought to have sought clarification from both these witnesses, without declaring them hostile and given opportunity to refresh their memory to resolve the conflict that has cropped up as to description of the flap doors and the number of crevice and also as to from which crevice the panch had seen passing of currency note. When Shri A.D. Shah was magnifying his arguments on this point, he has pointed out one aspect while commenting on the trustworthiness of panch no.1 Shri Soni (PW-2) that the said panch no.1 had neither remained objective nor has deposed an independent person. On the contrary, he has tried to even help the prosecution by giving exaggerated or false version. There is inconsistency in the evidence of the Investigating Officer, complainant and the panch qua the parts of the

clothes including the coat put on by the complainant on which the anthracene powder marks were seen (paragraph no.16 of the deposition of the panch no.1 and paragraph nos.24 and 25 of the deposition of the complainant).

28. In the same way, the panch has given conflicting version qua the experiment made by ultraviolet lamp while drawing first part of panchnama on 05th January, 1987. The panch has admitted that he has never seen anthracene powder earlier and Shri Jadav had explained characteristics of the anthracene powder. To explain the effect and use of anthracene powder as well as ultraviolet lamp, no formal experiment was made on any other currency note than the muddamal currency note. The currency note of Rs.100/- was initially shown to them in a normal broad day light and thereafter it was shown under the ultraviolet lamp rays. While answering the question posed by the Court, PW-2 Shri Soni has said that when it was shown under the ultraviolet lamp rays, initially there was no anthracene powder mark.

Thereafter, the anthracene powder was applied on the currency note. When it is not the case of the prosecution that the anthracene powder was applied on the muddamal currency note on 05th January, 1987 while drawing first part of panchnama then why the panch has answered the pointed question raised by the Court in the aforesaid manner. It is rightly argued by Shri A.D.Shah that only with a view to show that he is aware about the effect and use of anthracene powder, he has given this false and exaggerated version to the question asked by the Court. A panch witness being a Government employee normally keeps tendency to support the prosecution and by such similar one or two circumstances only, the Court can ascertain whether the witness is leaning towards prosecution or has remained inconsistent with the required objectivity. When it is doubtful that he had ever seen anything by peeping inside the cabin, then why the Court should accept his claim that he had overheard the conversation or he was capable to listen the talk at the relevant point of time. On the contrary, learned trial Judge

ought to have held that the evidence of panch on this point is not trustworthy and therefore, it would not be safe for the Court to rely on the evidence of the complainant only about conversation that had taken place between him and the appellant.

29. During the conversation on 05th January, 1987, in the cabin, it is alleged by prosecution that the appellant had demanded the amount by asking question as to what about his amount. When it is the case of the prosecution that prior to entering the cabin of the appellant, the complainant had paid the amount of Rs.200/- to the concerned clerk Nafisaben by taking file from Navinbhai. These two persons have been examined as defence witnesses to disprove the say of the complainant. So the complainant was sure that the file is with Navinbhai and there was no reason for him to go to the cabin of the appellant because on that day he was instructed to purchase some material and to keep the orig.applicant ready so that the source pipe can be linked with the water pipe fixed by the orig.applicant. Even

on completion of all these formalities, inaction on the part of the Water Department could have given some scope to raise assumption against the appellant but for him the subordinate staff is not completing the final work and unless that amount of Rs.100/- is paid, no further work shall be done. The learned trial Judge has drawn this inference mainly on the time spent in sanctioning the water connection. It is not necessary to repeat because it is discussed earlier in detail. So the learned trial Judge ought to have appreciated the above discussed aspects before drawing an inference against the appellant that he being the key person was not budging an inch in actually taking the source pipe to provide water connection sanctioned earlier on 26th December, 1986. Even payment of Rs.100/- would not have served the purpose because the applicant was required to complete the remaining work suggested by purchasing the material mentioned on the reserve side of the receipt of payment of Rs.200/-.

30. It is true that even if the version of the

panch is not found reliable or it is suffering from serious infirmities, the Court can accept the version of the complainant on the point of demand and acceptance by the appellant and the appellant can be linked with the crime. In the same way, even if the complainant had turned hostile and not supported the case of the prosecution, and if the version of the panch witness is found sound and reliable, then also the appellant can be linked with the crime. In the present case, it is not the say of the prosecution that any of the members of the raiding party had witnessed the actual passing of the currency note. Only two witnesses claims the same i.e. the complainant and the panch no.1. One of these two witnesses, if is not found reliable qua the improvement made contrary to the panchnama by him and because of his attitude to lean towards the prosecution loses the objectivity, then whether the evidence as to demand of amount on 05th January, 1987 by the appellant from the complainant available on record in the nature of evidence of the complainant should be accepted as gospel truth, was a question and

according to me, that part of the evidence has not been appreciated with great caution because as discussed earlier, there are sufficient circumstances on record to show that the complainant was out to trap the appellant; otherwise he could have tried to obtain some positive result without paying amount of bribe on 01st January, 02nd January or 03rd January. He has started talk on 29th December, 1986 in a cult way as alleged by the complainant. The similar question could have been asked by him on 03rd January, 1987 by showing the receipt of payment of Rs.200/- and when the rest of the work has been completed, why the department is not taking the source pipe upto the connecting pipeline brought by the orig.applicant. At one place, the complainant has attempted to show that he could not pay the amount of Rs.200/- because the window was closed; but if we look to the time to deposit the amount by the complainant in the Water Department and the timings to deposit the amount which have come on record for acceptance of amount in the Water Department, the said window would not have

been closed on that day, because at other place in the deposition, the complainant himself has accepted that he was asked to pay the amount at any time between 03-00 and 05-00 p.m. It was not even suggested to Nafisaben, defence witness examined, that she was waiting for a signal of acceptance of amount of Rs.200/- from the complainant by the appellant, nor she has been suggested a question that once the complainant had approached her to pay the amount but the amount was not accepted saying that the window is closed. On the contrary, it has come on record that either on 03rd January or on any occasion, it had not happened that he could not pay the amount of Rs.200/- only because the time for accepting the amount by the Water Department was over. On 31st December i.e. on the day on which the trap had failed, the complainant had gone to the office of the appellant keeping Rs.200/- over and above the amount of Rs.100/- muddamal currency note. As Shri Jadav, the Trapping Officer as well as the complainant were knowing that firstly they shall have to pay the amount of Rs.200/- with

the Department towards water connection charges, therefore only, the amount of Rs.206/- was kept with him. On that day, for the reasons best known to the complainant, he had not gone to Navinbhai with a request to give file to him; otherwise he would have stated so before the Court that he did make attempt but Navinbhai refused to hand over the file and, therefore, he could not pay the amount on 31st December, 1986 required to be paid as per the rules. On 3rd January, 1987 also he has not done so. The question would be, why on 05th January, 1987 he decided to go to Navinbhai directly even without intimating the appellant. Surprisingly and contrary to his earlier conduct as of 31st December, he approached Navinbhai and without any resistance, he was able to obtain the file from Navinbhai and had paid the amount of Rs.200/-. On 05th January, 1987 also he had taken with him an amount of Rs.206-50 ps., meaning thereby, more than the amount taken by him on 31st December. It may be a co-incident or it may be the consistent conduct of the complainant to see that the appellant is

trapped any how on any day after 31st December, 1986.

31. According to me, Shri Jadav, Investigating Officer, ought to have brought documentary evidence to the Court that once the currency note used on 31st December was retained by him and preserved by him in a particular way and as per the norms if fixed by the department and if there are no such norms, then he ought to have said so because the muddamal currency note remained with Shri Jadav from 31st January, 1986 to 05th January, 1987 and whether the envelope or piece of paper in which the muddamal currency note was wrapped also could have been brought before the Court is also a question. When the amount of Rs.206/- mainly tallies, then in this set of fact situation, whether the say of the complainant and Shri Jadav should be believed that the muddamal currency note was retained by him and he himself only or not. For the sake of argument, if the Court accepts the say of Shri Jadav that the muddamal currency note was retained by him upto 05th January, 1987, then he ought

to have explained as to why it was retained by him, whether he was sure that one day the complainant would come giving him a signal that the appellant is ready and he can be trapped any moment. Whether any question was posed by Shri Jadav while recording further complaint on 05th January, 1987 that the complainant had ever paid the amount of Rs.200/- which is required to be paid to the Department till that day and if the answer is in negative, then the complainant could have asked further as to why he has not paid the amount and completed the other formalities which are required to be completed by the complainant. In light of the totality of the this set of facts, the learned trial Judge ought not to have placed so much reliance on the evidence of the complainant, panch no.1 and/or Shri Jadav, Investigating Officer.

32. It is in evidence that when the trap was arranged on 31st December, 986, Shri Jadav had not gone to the office of the Water Department and he had remained with his Jeep car with some members of the raiding party at Khamasa

Chowki. During the course of hearing, the Court is informed by the learned counsel appearing for the appellant including the learned Additional Public Prosecutor that there is reasonable good distance from the office of the Water Department and the Khamasa Chowki. It may be about 200 metres. So the question would be that the say of Shri Jadav should be accepted that on 05th January, 1987, he had accompanied the raiding party and he was present with the raiding party in the Water Department so that he can immediately reach in the cabin and instruct he accused to behave in a particular manner. On the contrary, the entire reading of the evidence gives an impression that on 05th January, 1987 also the Jeep car of the ACB was stopped at Khamasa Chowki and it was not possible for the complainant or panch to say positively that Shri Jadav had followed them when they were about to enter the office of the appellant. So the time of reaching of Shri Jadav in the cabin of the appellant probably was not the immediate act after the signal given by the complainant by putting off his coat.

33. The prosecution has attempted to prove the acceptance of bribe amount, this evidence in this regard was required to be appreciated by keeping four major points in mind. One of the major points is the status of the independent witness i.e. panch-his independentness and to what extent his version should be believed. It is alleged by the prosecution that the muddamal currency note initially was to be put in the drawer and there is reference of use of handkerchief by the appellant. If really the panch no.1 had informed Shri Jadav immediately at the spot that he had overheard about the words uttered by the appellant that he may put the amount in the drawer in that eventuality Shri Jadav could have made experiment with the ultraviolet lamp of the drawer also. There is no reference of throwing ultraviolet lamp rays inside the drawer and handkerchief. There is positive reference in the panchnama that the pocket diary, handkerchief, comb, etc. were recovered from the appellant. It is in evidence that the complainant was insisting for an amount of Rs.100/- practically

thirsting the note to him by extending the hand and at that time, he had refused to accept the same. In doing the gesture of refusing the forcible attempt to hand over the amount, his hands may have come in contact with the anthracene powder and on arrival of the ACB party, and Trapping Officer, he got disturbed and while taking out the handkerchief from his pocket, the chit which was lying in his pocket may have come in contact with the anthracene powder.

34. The chit on which the anthracene powder marks were seen is a very personal document and it is a small piece of paper and the details of the article written on the paper clearly suggests that the material mentioned therein was required to be purchased by the appellant and there is no reason for the Court to believe the say of Shri Jadav and other witnesses including the panch that this chit was recovered from his pocket along with other articles, then why the recovery of muddamal currency note should not be believed from the the pocket of the appellant and if the amount

has reached to the pocket of the appellant, then the Court should presume against the appellant that he must have accepted the amount of bribe. The arguments advanced by Shri A.D.Shah positively can help the appellant to material extent because the appellant is supposed to place the facts showing some probability and this probability is shown in the aforesaid manner that the chit may have stained with anthracene powder because of his attempt to take out handkerchief from the very pocket. Whether this explanation ought to have been accepted as plausible explanation is again a question. So if there is reliable evidence as to the passing of the amount on record was seen either by complainant or panch or both of them, then the evidence as to presence of anthracene powder can help the Court in accepting the oral version as more reliable piece of evidence because the proof as to presence of anthracene powder mark is assisting the Court scientifically in drawing inference against the appellant and to raise rebuttable presumption under the law against

the appellant. But when there is either no evidence or hazy evidence against the appellant as to the demand or acceptance or there is weak piece of evidence as to the demand of bribe amount, then whether the use of anthracene powder can be considered as an important scientific assistance to the Court or not because in the present case the totality takes this Court to at least one inference that presence of anthracene powder marks found inside the pocket and on the chit, is only incriminating circumstance against the appellant which was required to be explained by the appellant by putting plausible explanation. In view of the fact situation, the prosecution was supposed to establish before the Court that the officer who is applying anthracene powder was aware about scientific use, its characteristics, etc. and panch was also satisfactorily explained as to the use of anthracene powder. It is undisputedly on record that neither Shri Jadav had obtained any training as to the use of anthracene powder nor the panch in whose presence the anthracene powder was applied on

muddamal currency note, as deposed before the Court. Even the panch examined before the Court was not aware about the effect and use of anthracene powder. Therefore only, there is some discrepancy in the anthracene powder marks seen by Shri Jadav and the complainant, than panch no.1 Shri Soni (PW-2). The observations made by this Court in the above cited decisions in the case of (1) Ram Singh Bhadra Singh (supra) and (2) Ambalal Motilal Patel (supra), referred to hereinabove, can help the defenceside. In the last several years, the Apex Court has recommended for the use of phenolphthalein powder and the prosecution where the case is slightly found resting on use and effect of the anthracene powder, the Courts have commented adversely as to the use of anthracene powder in laying down an ACB trap. Of course, Shri A.D.Shah has argued that it was not possible to carry out the experiment with the use of ultraviolet lamp in the cabin of the appellant being a very small cabin, etc. and there was no space as such where the panch and Shri Jadav along with Police Constable holding the ultraviolet

lamp even could enter and make experiment on the left side pant pocket of the appellant. It appears that the experiment must have been made at some other place then the cabin of the appellant. But without entering into the controversy on this point, it is necessary to observe that in absence of reliable clinching evidence as to acceptance of amount by the appellant, the learned trial Judge ought to have observed that it would not be safe for the learned trial Judge to convict the appellant merely because a chit having personal writing found from the pocket of the appellant had stains of anthracene powder because there is confusion as to description and use of anthracene powder in the entire case. The recovery of the muddamal currency note from the leftside pant pocket of the appellant at the instance of the panch is one important piece of evidence. But when the Court has commented earlier in detail as to trustworthiness of the panch witness, it would be difficult for this Court to pick out one or two lines from the evidence of the panch witness to link the appellant with the crime.

The evidence as to acceptance of amount of bribe is weak. It is not possible for the Court to say that the element of hidden demand has been successfully brought on record by the prosecution. The Investigating Officer has not even cared to ascertain whether the clothes put on by the complainant are also same which he had put on on 31st December, 1986. If the cloths were same, as the coat was the same, and the amount lying in the pocket of the complainant was same, only there was addition of Rs.0-50 ps. in the pocket, then what weigh this Court should give to the presence of anthracene powder on the chit or any other articles recovered from the pocket of the appellant which was required to be addressed by the learned trial Judge. Here it would be appropriate for this Court to refer to the observations made by the Apex Court in reference to the use of anthracene powder in laying down the ACB trap where the Apex Court in the case of Gopal Lal Ghisulal Chhipa and others v. the State of Gujarat, reported in 1998(1) GLH 943, has held that :

“14. Of course, when the tips of the right hand finger of the deceased-appellant were seen focusing the ultra-violet lamp rays, they were found with glittering with light blue florescent marks, and that would prima facie lead any one to hold that the deceased-appellant accepted the amount. It may be stated that in this case anthracene powder used. The Supreme Court in this regard in the case Ranbir Singh v. State of Punjab, AIR 1976 S.C. 91 has made it clear that it is desirable that the currency notes to be used for the purpose of trap should be treated with phenolphthalein powder so that the handling of such marked currency notes by the public servant can be detected by chemical process and the court does not have to depend on oral testimony which is some times of a dubious character for the purpose of deciding the fate of the public servant. This High Court when the occasion arose in the case of a Nathalal Govindji Vaghela

v. State of Gujarat-IXX (2) G.L.H. 190 has likewise held observing further that in the case of anthracene powder there is no detection by any chemical process and therefore the use of anthracene powder must be ruled out even if the witnesses may speak about a particular marks being found when the concerned articles and limbs are viewed under an ultra violet lamp. It still rests entirely on the oral evidence of witnesses in whose presence the experiment is alleged to have been carried out with no opportunity to test their veracity by reference to any scientific method of testing and analysis, which is surely available in a case in which phenolphthalein powder is used. The Supreme Court again in the case of Khilli Ram v. State of Rajasthan-1985 S.C.C. (Cri.) 24 has made it clear that phenolphthalein powder treatment to currency note to be used for the purpose of trap should be resorted to. The Allahabad High Court

in the case of Devendra Narain v. State of U.P.- 1993(3) Crimes 167 has held to which I agree that it is mandatory for the leader of the trap to treat the bribe money with phenolphthalein powder before laying the trap and in the absence of any explanation for not so doing, the prosecution case becomes suspect. In this case anthracene powder is used and not the phenolphthalein powder, which would not lead the court with certainty to reach a particular definite conclusion. For not using the phenolphthalein powder no explanation is offered by the prosecution. When that is the case, nothing with certainty can be determined in favour of prosecution. It would not therefore be just and proper to conclude against the appellant simply on the basis of the light blue florescent marks that could be noted on the hands and limbs. At this stage, it is necessary to refer to the decision of this Court rendered in the case of Ambalal Motibhai Patel

v. State- AIR 1961 Gujarat 1, wherein it is laid down that if the anthracene powder is used, the prosecution has to clearly prove that no powder was detected with naked eye, and that when ultra violet light was focused, there was emission of light blue florescent light. If the evidence proved positive result for both the tests it would be right to infer that anthracene powder was present. In short the prosecution has to prove that there was light blue emission of light under the influence of ultra violet lamp. It is not sufficient for the prosecution to prove that under the ultra violet light, witnesses saw the stains of while powder, or even that under ultra violet light they saw some sparkling or some shimmering. In this case neither of the witness inclusive of the Investigating Officer says that when ultra violet lamp rays were focused, light blue flourescent marks could be seen. They only say that marks of powder were seen

on something sparkling could be seen. This, in view of above-referred decision of this Court in the case of Ambalal Motibhai Patel is not enough. Hence on the techniques of anthracene powder no definite conclusion can be drawn, but it seems that the learned Judge below overlooked this aspect and was mainly swayed away with the techniques of anthracene powder. The case of “acceptance” therefore on the basis of the marks noted, cannot safely be accepted.”

35. Therefore, it is rightly argued by Shri A.D. Shah, learned counsel appearing for the appellant, that in such a case what presumption would have been raised against the appellant under the law and the argument of learned Additional Public Prosecutor that the presence of anthracene powder marks on the chit found from the pocket of the appellant, should be considered as sufficient evidence to raise presumption as to the acceptance of amount, then according to me, the explanation

tendered by the appellant is not found totally improbable.

36. It is settled legal position that when two parallel views are possible, the one in favour of the accused requires to be accepted. It is not necessary to cite the decision of the Apex Court on this point because there are number of decision on this point. So when one view possible in this case is that the complainant was out to trap the appellant any how in any manner, whether he accepted the amount or not, otherwise he ought not to have acted in the manner he has acted, and Shri Jadav would not have also acted respondent reacted in the manner in which he had acted or reacted in the manner discussed in the foregoing paragraphs.

37. For short, according to me, the appellant deserves benefit of doubt. Of course, he being a key person in actually providing the water connection to the orig.applicant and other consumers approaching the Ahmedabad Municipal Corporation, the Ahmedabad Municipal Corporation can deal with the appellant accordingly, but there is no element of

criminal involvement of the appellant in the bribery case.

38. In view of above observations, the present appeal is hereby allowed. The judgment and order of conviction and sentence dated 27th September, 1989, passed by the learned Special Judge, Ahmedabad City, in Special Case No.10 of 1988, is hereby quashed and set aside. The appellant is hereby ordered to be acquitted from the charges levelled against him in respect of the offence in question. The appellant is given benefit of doubt. The bail bond executed by the appellant stands discharged. The amount of fine, if any paid, shall be refunded to the appellant on proper identification.

(C.K. Buch, J)

Aakar